

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

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5
6 _____
7 TOM KONDASH, On Behalf)
8 of Himself, and All)
9 Others Similarly)
10 Situated,)
11)
12 Plaintiff,)
13)
14 vs.) Case No.
15) 1:15-cv-00506-SJD
16 KIA MOTORS AMERICA,)
17 INC., and KIA MOTORS)
18 CORPORATION,)
19)
20 Defendants.)
21 _____
22

23 VIDEOTAPED DEPOSITION OF BRUCE STROMBOM
24 Los Angeles, California
25 Tuesday, February 27, 2018
26 Volume I

27 Reported by:
28 LORI M. BARKLEY
29 CSR No. 6426
30 Job No. 2828457
31 PAGES 1 - 142

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12 Defendants.)
)

Page 3

1 APPEARANCES:

2

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1 INDEX

2 WITNESS

EXAMINATION

3 BRUCE STROMBOM

4 Volume I

6 BY MR. EDWARDS

8

7 BY MR. LAZATIN

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9 EXHIBITS

11 NUMBER

DESCRIPTION

PAGE

13 Exhibit 1 Notice of Deposition

14

15 Exhibit 2 Letter, dated April 2, 2017, with
16 Bruce Strombom's Curriculum Vitae
17 attached

16

19 Exhibit 3 Invoice for period ending

19

20 July 31, 2017 for Total

21 Professional Services totalling

22 \$14,847.50

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1 INDEX (Continued) :

2 EXHIBITS

3 NUMBER	4 DESCRIPTION	5 PAGE
6 Exhibit 4	7 Invoice for period ending August 31, 2017 for Total Professional Services totalling \$122,198.25	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Exhibit 5	Invoice for period ending September 30, 2017 for Total Professional Services totalling \$99,709.50	20
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INSTRUCTION NOT TO ANSWER

Page Line

10 8

1 Los Angeles, California, Tuesday, February 27, 2018

2 | 9:04 a.m.

3

4 VIDEO OPERATOR: Good morning. We are on
5 record at 9:34 a.m., February 27th, 2018.

6 Please note that microphones are sensitive,
7 may pick up whispering, private conversation, and
8 cellular interference.

9 Please turn off all cell phones, or place
10 them away from the microphones as they can interfere
11 with the deposition audio.

12 Audio and video recording will continue to
13 take place unless all parties agree to go off the
14 record.

15 This is Media Unit Number 1 of the video
16 recorded deposition of Bruce Strombom taken by the
17 counsel of the plaintiff in the matter of Tom Kondash
18 versus Kia Motors Incorporated, et al., filed in the
19 United States District Court of the Southern District
20 of Ohio, Western Division.

21 This deposition is being held at O'Melveny
22 located at 400 South Hope Street in the City of
23 Los Angeles, California.

24 My name is Wesley Mack from the firm of
25 Veritext. I am the videographer. Today's court

1 reporter is Lori Barkley from the firm of Veritext.

2 I'm not authorized to administer an oath.

3 I'm not related to any party in this action, nor am I
4 financially interested in the outcome.

5 Counsel and all present in the room
6 attending remotely, will now state their appearances
7 and affiliations for the record.

8 If there are any objections to the
9 proceeding, please state them at the time of your
10 appearance, beginning with the noticing attorney.

11 MR. EDWARDS: Adam Edwards, Greg Coleman Law
12 for the plaintiff and the proposed class.

13 MR. LAZATIN: Carlos Lazatin, O'Melveny &
14 Myers, for Defendants.

15 MR. CUTTONE: Mario Cuttome, O'Melveny &
16 Myers for Defendants.

17 VIDEO OPERATOR: Thank you.

18 The witness will be sworn in and we may
19 begin the examination.

20
21 BRUCE STROMBOM,
22 having been administered an oath, was examined and
23 testified as follows:
24
25

1

EXAMINATION

2

BY MR. EDWARDS:

3

Q. Dr. Strombom, good to see you again.

4

A. Good to see you.

5

Q. I took your deposition a few weeks ago on
the Hyundai case; you recall that?

6

A. I do.

7

Q. Okay. So I'm going to be going over a few
of the introductory things, and I apologize in
advance that some of it is going to overlap, but I
need to ask you the same questions in this case to
make sure that we're all on the same page, okay?

8

A. Sure.

9

Q. How many depositions have you given,
approximately?

10

A. On the order of 70 or 80 depositions.

11

Q. Okay. So you understand that I'm going to
be asking you a number of questions today and we need
verbal responses as opposed to head shakes, correct?

12

A. Yes.

13

Q. Okay. And you understand that it's best to
avoid answers like "uh-huh" and "huh-uh" so we can
make a clear record.

14

A. Yes.

15

Q. If you would, please let me finish my entire

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1 question. I do tend to ask questions more slowly
2 than you might be used to and I will tend to pause,
3 but I will try to let you get out your entire answer
4 if you'll also allow me to get out my entire
5 question, we can avoid talking over each other, okay?

6 A. Okay.

7 Q. All right. What did you do to prepare for
8 your deposition here today?

9 A. I reviewed documents from the case and I met
10 with counsel yesterday.

11 Q. Okay. Let's talk about meeting with counsel
12 first.

13 Who did you meet with?

14 A. Carlos Lazatin and Mario Cuttome.

15 Q. And where was that meeting?

16 A. In O'Melveny's office here in L.A.

17 Q. Okay. How long did that meeting last?

18 A. Maybe six hours, including lunch.

19 Q. Okay. Was anyone else present other than
20 yourself, Mr. Lazatin, and Mr. -- is it Cuttome?

21 MR. CUTTOME: Cuttome.

22 MR. EDWARDS: Cuttome, I'm sorry.

23 Q. Anyone else present?

24 A. No.

25 Q. Okay. You talked about, let me first ask

Page 10

1 you: Did you do -- did you have any other meetings,
2 whether in person or on the telephone in preparation
3 for this deposition here today?

4 A. No.

5 Q. You told me that you reviewed documents in
6 preparation for your deposition here today, correct?

7 A. Yes.

8 Q. Okay. Which documents did you review?

9 MR. LAZATIN: Objection, privilege,
10 work-product.

11 Instruct you not to answer.

12 BY MR. EDWARDS:

13 Q. Just so I'm clear, I'm not asking you to
14 reveal what counsel instructed far as what documents
15 you should review. I'm asking you aside from
16 conversations with counsel, what documents you did
17 review in preparation for your deposition here today?

18 MR. LAZATIN: Let me just be clear. You're
19 asking about documents, any documents he reviewed
20 other than ones I asked him to review?

21 MR. EDWARDS: No. I'm -- I'm not trying to
22 get into the substance of conversations that you had
23 with him. I'm asking him a pretty simple and
24 straightforward question, I think: What documents
25 did he review in preparation for his deposition here

1 today?

2 MR. LAZATIN: Okay. The documents he
3 reviewed, you can inquire about this, but the
4 documents he reviewed were provided to him by
5 counsel, and therefore are covered by work-product,
6 so I'm going to instruct him not to answer on that
7 basis.

8 MR. EDWARDS: So your -- your position is
9 with regard to experts in this case, if you or I
10 provide our experts with certain documents, then you
11 or I would not be able to inquire as to what
12 documents were reviewed in preparation for the
13 deposition today.

14 Is that the position you're taking?

15 MR. LAZATIN: If he reviewed them at the
16 instruction of counsel, yes.

17 MR. EDWARDS: Okay.

18 MR. LAZATIN: Which is the case here, but
19 you may inquire about that in case there are others.

20 MR. EDWARDS: Right.

21 Q. So all of the documents that you reviewed in
22 preparation for your deposition were documents
23 provided to you by counsel?

24 A. Well, they were provided to me by counsel.

25 I guess there were some that -- that weren't, some of

1 the documents referenced in my report --

2 Q. Okay.

3 A. -- which I reviewed independently.

4 Q. Okay. And what were those documents?

5 A. I think there were articles that appeared in
6 various publications and news broadcasts related to
7 sunroof shattering. I reviewed the deposition
8 transcript of Mr. Gaskin and Mr. Weir.

9 Q. In the Kia case?

10 A. In the Kia case.

11 Q. And what articles specifically did you
12 review?

13 A. There were ten articles that are listed in a
14 footnote in my report including articles from the
15 "New York Times," transcript of Good Morning America,
16 and various others in a specific footnote that relate
17 to news reports about sun -- sunroof shattering.

18 Q. Okay. All ten of those articles had to do
19 with news reports about sunroofs shattering?

20 A. Yes.

21 Q. Okay. All with regard to Kia vehicles?

22 A. No. There was some Kia vehicles, some more
23 general articles.

24 Q. Okay. And is there a reason why you thought
25 those articles in particular were important to review

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1 for your deposition here today?

2 A. They were just articles that I relied on in
3 forming my opinions in my report, so I thought it
4 would be advisable to refresh myself on those.

5 Q. Okay. And so you also reviewed other
6 documents in preparation for your deposition here
7 today, correct?

8 A. Yes.

9 Q. Other than the ones you just mentioned?

10 A. Yes.

11 Q. Okay. You're going to listen to admonition
12 of counsel to not reveal what those documents were
13 because those were documents that counsel provided to
14 you; is that correct?

15 A. Yes. I'm going to take the instruction of
16 counsel on that respect.

17 Q. Okay. Were those also documents that you
18 relied upon in your report?

19 A. Yes.

20 MR. EDWARDS: So, Carlos, even though
21 they're documents he relied upon in his report,
22 you're not going to allow him to answer which
23 documents he reviewed in preparation for his
24 deposition?

25 MR. LAZATIN: Those documents are listed in

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1 his reports, which of those he did provide to us and
2 not our instruction, that's correct.

3 MR. EDWARDS: Okay. There are a number of
4 documents you relied upon in your report that you
5 specifically reviewed in preparation for your
6 deposition other than the news articles and the
7 deposition transcript of Mr. Gaskin and Mr. Weir,
8 correct?

9 A. Yes, that's correct.

10 Q. All right. And you reviewed those in
11 preparation for your deposition here today?

12 A. Yes.

13 Q. Did you receive a deposition notice in this
14 case?

15 A. Yes.

16 Q. Okay. When did you review it for the first
17 time?

18 A. Last week sometime.

19 MR. EDWARDS: Go ahead and mark this as the
20 first exhibit, please.

21 (Exhibit 1 was marked for identification by
22 the court reporter and is attached hereto.)

23 BY MR. EDWARDS:

24 Q. If you would review that document that we've
25 marked as Exhibit 1.

Page 15

1 Did you bring any documents with you to the
2 deposition today?

3 A. No.

4 Q. Okay. Did you review the documents
5 requested from Bruce Strombom, which is attached to
6 the notice of deposition that we've marked as
7 Exhibit 1?

8 A. Yes. I -- I reviewed this sheet.

9 Q. Okay. Do you see there under number 1, we
10 asked you to (as read) :

11 Produce any and all documents
12 which you considered in the
13 development of your opinions in this
14 matter including legal research,
15 materials from other cases, or any
16 other materials generated from any
17 other source including all backup
18 data, notes, or other documents
19 containing facts, data, or
20 assumptions that you relied upon in
21 forming your opinions in this
22 matter.

23 Did you review that before today?

24 A. Yes.

25 Q. Okay. Did you make a search to determine if

1 you had documents responsive to Request Number 1?

2 A. Yes. I basically looked at my list of
3 documents relied upon, which is a complete list of
4 the documents that I considered in forming my
5 opinions.

6 Q. Okay. So every document that you considered
7 in the development of your opinions in this matter is
8 already set forth in your report?

9 A. Yes.

10 Q. Okay. And all of those documents have been
11 provided to counsel?

12 A. Yes.

13 Q. Okay. Number 2 (as read) :

14 All agreements between you and
15 defendants regarding your retention
16 as an expert in this matter.

17 Do you -- did you review that request?

18 A. Yes.

19 Q. And did you provide the retainer agreement
20 you had in this case to counsel?

21 A. Yes.

22 MR. EDWARDS: Go ahead and mark this as the
23 next exhibit, please. Sorry.

24 (Exhibit 2 was marked for identification by
25 the court reporter and is attached hereto.)

1 MR. EDWARDS: You have to share on that one,
2 Carlos.

3 MR. LAZATIN: What's this? Which one is
4 this?

5 MR. EDWARDS: This is a letter that you
6 provided to us, dated April 2nd, 2017, and it also
7 has a C.V. attached.

8 MR. LAZATIN: Okay.

9 BY MR. EDWARDS:

10 Q. Is this April 2nd, 2017 letter, the first
11 two pages or three pages of which are attached to
12 what we've now marked as Exhibit 2, is that what you
13 would consider to be the retainer agreement that you
14 provided to O'Melveny in this case?

15 A. Yes.

16 Q. Okay. Did you seek to provide a separate
17 retainer agreement for the Hyundai case?

18 A. I believe so, yes.

19 Q. On page 3, I see there's an accepted and
20 agreed page for signature by Kia Motor Americas and
21 Kia Motors Corporation.

22 Do you see that?

23 A. Yes.

24 Q. Okay. Is there a reason why that's not
25 signed?

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1 A. I imagine there's a reason. I don't know
2 what it is.

3 Q. Okay.

4 A. The only copy I have is the copy that I
5 signed and sent out.

6 Q. Okay. And then there's a signature below
7 that also for O'Melveny to sign?

8 A. Correct.

9 Q. And do you have a signed copy of the
10 agreement with the signature from either a
11 representative from Kia or O'Melveny on it?

12 A. I don't.

13 Q. Okay. And then the next pages of what we've
14 marked as Exhibit 2, I think, appear to be a C.V.
15 that you provided us.

16 Do you see that?

17 A. Yes.

18 Q. Okay. Is that your most current C.V.?

19 A. Yes, it is.

20 Q. Okay.

21 MR. LAZATIN: Wait. Did this, the agreement
22 have the C.V. attached or you've just stapled them
23 together?

24 MR. EDWARDS: I think -- I don't know
25 whether they were produced that way or whether they

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1 were just stapled together now. I thought it best
2 for three of them stapled to this so we didn't have
3 pages flying around.

4 MR. LAZATIN: Okay.

5 MR. EDWARDS: I know they were produced
6 together.

7 MR. LAZATIN: Okay.

8 MR. EDWARDS: I'm going to hand you what was
9 produced as KMA(Strombom)_00002 -- 2 and 3. It's
10 kind of written, written in there in pen, it appears.
11 I don't know if it was cut off, but we'll mark that
12 as Exhibit 3, please.

13 (Exhibit 3 was marked for identification by
14 the court reporter and is attached hereto.)

15 BY MR. EDWARDS:

16 Q. Is that your bills in this case?

17 A. It appears to be, yes.

18 Q. Okay. From what time period?

19 A. It's dated as of August 31st, 2017. It's
20 for the period ended July 31st, 2017.

21 Q. Okay. And what is the total for the work
22 done from that invoice?

23 A. Professional -- Total Professional Services
24 of \$14,847.50.

25 MR. EDWARDS: Go ahead and mark as the next

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1 numbered exhibit, which I think will be Exhibit 4; is
2 that correct?

3 THE REPORTER: Yes.

4 MR. EDWARDS: This was produced as
5 KMA(Strombom)_00004 and 00005.

6 (Exhibit 4 was marked for identification by
7 the court reporter and is attached hereto.)

8 BY MR. EDWARDS:

9 Q. And can you identify that document for me,
10 please.

11 A. This is a copy of our invoice for the period
12 ending August 31st, 2017.

13 Q. Okay. And what was the total there for the
14 billing from your company to Kia?

15 A. Total professional services of \$122,198.25.

16 Q. And does that accurately reflect your
17 billing for the time period indicated on Exhibit 4?

18 A. I believe it does.

19 MR. EDWARDS: Okay. Let's go ahead and mark
20 as Exhibit 5 what was produced to us as
21 KMA(Strombom)_00006 and 00007.

22 (Exhibit 5 was marked for identification by
23 the court reporter and is attached hereto.)

24 BY MR. EDWARDS:

25 Q. And what is the relevant time period for

1 that billing for your professional services?

2 A. For the period ended September 30th, 2017.

3 Q. Okay. And what was the total amount of the
4 bills to Kia for that time period?

5 A. Total professional services of \$99,709.50.

6 Q. Do Exhibits 3, 4, and 5 represent the total
7 billing to date that you have incurred for
8 professional services rendered for your work in the
9 Kia case?

10 A. If those are all that I sent you, then that
11 would be our total billings to date.

12 Q. Okay. So far in this case you have billed,
13 I'm just doing the math in my head, a little over
14 \$235,000 to Kia in this case?

15 A. That sounds close, yes.

16 Q. Okay. And you haven't been asked to design
17 a damages model in this case, have you?

18 A. No. Not an affirmative damage model, no.

19 Q. Okay. You haven't been asked to design any
20 sort of survey to calculate consumers demand, have
21 you?

22 A. No, I haven't been asked to affirmatively
23 design any surveys.

24 Q. Okay. You haven't been asked to conduct any
25 survey for any reason in this case, correct?

1 A. That's correct.

2 Q. Primarily your assignment in this case is to
3 review the damages model proposed by, or excuse me,
4 the survey proposed by Mr. Gaskin and provide your
5 opinions about that; is that fair?

6 A. I think my assignment also includes
7 commenting upon how the analysis going -- is going to
8 be used by Mr. Weir to calculate damages, so I
9 reviewed and commented both on Mr. Gaskin's and
10 Mr. Weir's reports.

11 Q. Okay. What is your hourly rate in this
12 case?

13 A. \$720 an hour.

14 Q. How many conjoint analysis surveys have you
15 designed?

16 A. I have not designed a conjoint analysis
17 survey affirmatively.

18 Q. Okay. You are currently employed as the
19 managing principal for analysis group in Los Angeles,
20 California?

21 A. Yes, I am a managing principal.

22 Q. Okay. Does your work primarily involve
23 litigation?

24 A. Approximately 75 percent of what I do is
25 related to litigation or potential litigation, and

1 about 25 percent is related to public policy or
2 consulting assignments with companies.

3 Q. Approximately how many cases have you worked
4 on as an expert witness?

5 A. Where I was the designated expert?

6 Q. Correct.

7 A. Something over a hundred.

8 Q. Have you ever been asked to develop a
9 damages model for a class action case?

10 A. I -- I think in one case I was asked to
11 perform some calculations based upon wage an hour
12 data. I guess that could be considered a damages
13 model. So I think the answer is yes.

14 Q. What case was that?

15 A. It was a case involving employees at LAX.
16 It was a wage an hour case that involved employees at
17 LAX, a case that I ended up never issuing an expert
18 report or testifying on, but I was retained and did
19 some amount of work in that respect.

20 Q. Do you remember the name of the case?

21 A. I don't.

22 Q. Were you retained in that case by counsel
23 for the plaintiffs or the defendant?

24 A. The plaintiffs.

25 Q. Okay. Was the plaintiff in that case a

Page 24

1 company? A business?

2 A. No. It was a class of employees.

3 Q. Okay. And you told me it was in a wage an
4 hour case?

5 A. That's right.

6 Q. Is there a reason why you didn't issue a
7 report in that case?

8 A. Yes.

9 Q. What was the reason?

10 A. The case settled.

11 Q. Okay. How did you intend to calculate class
12 damages in that case?

13 A. I looked at the time records that the
14 company maintained, electronic database of time
15 records, and performed various calculations to
16 identify those hours in compensation that met the
17 plaintiff's decision rule about what damages were in
18 the case, so I basically crunched some data to try
19 and calculate under compensation for individual
20 members of the class.

21 Q. Okay. Have you ever been retained to design
22 a damages model in a class action product defect
23 case?

24 A. I've calculated diminution of value of
25 vehicles on sort of a class-wide basis. I don't know

1 if that qualifies as a yes to your -- to your
2 question, but I have looked at used car prices to
3 assess whether there's any evidence of diminution in
4 value associated with an alleged defect on several
5 occasions.

6 Q. Well, in those cases, did you design a model
7 for measuring class-wide damages or were you
8 attempting to rebut a damages model set forth by
9 plaintiffs?

10 A. Well --

11 MR. LAZATIN: Objection, form.

12 THE WITNESS: In the context of those cases,
13 I think one of the claims was that there was a
14 diminution of value of the vehicles. My recollection
15 is that plaintiffs did not put forward a methodology
16 that I thought measured what they said they were
17 planning to measure, which is the diminution in
18 value.

19 And so I looked at the available data to see
20 if there was any evidence that these vehicles had a
21 diminution in value associated with the defect. So
22 that -- that's essentially what I did. You can
23 characterize that however you want, but that's
24 basically what I did.

25

1 BY MR. EDWARDS:

2 Q. Okay. And what was your conclusion?

3 A. In those four cases, the at-issue vehicles
4 did not show any statistically significant diminution
5 in value.

6 Q. Okay.

7 A. Four, there may have been five actually, now
8 that I think about it.

9 Q. So we're talking about four or five total
10 class cases involving automobiles that you've worked
11 on; is that correct?

12 A. That I -- for which I've calculated
13 diminution in value, that's right.

14 Q. All right.

15 A. There are other, other automobile class
16 defect cases that I've worked on, but ...

17 Q. Okay. And in every case where you've
18 attempted to, or every automobile case where you've
19 attempted to calculate diminution in value, is it
20 fair to say that you found that there was no
21 significant diminution in value?

22 A. That's correct. For every case that I've --
23 that I've attempted that, yes --

24 Q. Okay.

25 A. -- for the class vehicles. I found

1 diminution in value from other vehicles in the
2 control group, but not for the vehicles at issue.

3 Q. Okay. I know you've told me you've never
4 designed a conjoint analysis survey.

5 A. That's correct.

6 Q. Do you feel sitting here today that you have
7 the proper training and qualifications to design a
8 conjoint analysis survey?

9 A. I think there are many aspects to the
10 conjoint analysis. There -- it's based upon economic
11 principles, about willingness to pay, so there are
12 aspects of a conjoint analysis that I feel qualified
13 to comment about, and there are aspects that I'm
14 really not the expert in, specifically in terms of
15 the survey design and execution, I wouldn't hold
16 myself out as a conjoint survey expert.

17 Q. Okay. So you hold yourself out as an expert
18 in economics; is that fair?

19 A. That's true, yes.

20 Q. Okay. So as far as the survey design
21 itself, that's kind of outside the scope of your
22 expertise?

23 A. Well, there are aspects of survey design and
24 execution that are -- that I feel qualified to
25 comment upon based upon just basic scientific method

1 and appropriate research techniques based upon my
2 academic training and also my experience in business.

3 But I wouldn't say I'm a -- a -- I wouldn't
4 hold myself out as a, say, a full-service survey
5 expert. For example, in this case, Professor
6 Reepstein is somebody who I took to or think of as a
7 conjoint expert in all dimensions, and he's really
8 the expert in this -- in the survey aspect.

9 Q. What about Mr. Gaskin, do you consider him
10 to be an expert in surveys?

11 A. I -- I really -- I don't have an opinion
12 about Mr. Gaskin. I frankly don't know exactly what
13 his qualifications are.

14 Q. Okay. I believe I asked you this question
15 specifically in the Hyundai case, and you indicated
16 to me that you don't hold yourself out as a conjoint
17 survey design expert; is that -- is that the same
18 today?

19 A. Yeah. No. That's the same today and that's
20 what I think I tried to communicate here.

21 Q. Okay. Okay. If -- in a law firm comes to
22 you in the context of litigation and asks you if you
23 would serve as an expert to design and implement a
24 conjoint analysis survey for the purposes of
25 providing data for a class-wide damages model, would

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1 you undertake that, yourself, or refer them to
2 someone else?

3 A. Well, if it's affirmatively designing a
4 conjoint study, I would probably refer them to
5 someone else. There's certainly aspects of conjoint
6 studies that I feel qualified to comment upon, and
7 make observations about, but I don't think I've held
8 myself out as an expert to design -- affirmatively
9 design a conjoint analysis, nor would I at this
10 point.

11 Q. Okay. Just going back to the documents
12 requested as part of the notice, and feel free to go
13 back to the notice there, so number 3 asks for your
14 complete billing record related to your retention by
15 Defendants in this matter.

16 We previously marked as Exhibits 3, 4, and
17 5, I think, the bills that you provided.

18 Do you believe that you have provided us
19 with the complete billing records related to your
20 retention by Defendants in this matter?

21 A. Yes, I think so.

22 Q. Okay. Please take a look at number 4. That
23 asks for (as read) :

24 Any and all correspondence,
25 documents, written materials,

1 e-mails, or other physical evidence
2 exchanged by you and anyone other
3 than attorneys for Defendants
4 relating to your retention in this
5 action by the defendants.

6 Do you see that?

7 A. Yes.

8 Q. Okay. And you reviewed that before today?

9 A. Yes.

10 Q. Okay. Did you make a search to see if you
11 had correspondence, documents, written materials,
12 e-mails, or other physical evidence that you
13 exchanged between another individual, not counsel, in
14 this matter?

15 A. Yes.

16 Q. Okay. And did you find anything?

17 A. No.

18 Q. So if I may look at Exhibit 5 here, in
19 addition --

20 You okay?

21 I'm looking at Exhibit 5 under Professional
22 Hours, and it lists the number of professionals other
23 than -- other than yourself. It lists a
24 Mr. Gustafson?

25 A. Yes.

1 Q. Vice president. He's also worked on -- on
2 this Kia case if I'm reading these bills correctly?

3 A. That's right.

4 Q. A Mr. -- well, I don't know if it's Mr.,
5 it's a J. Wiles?

6 A. Yes.

7 Q. What's the "J" stand for?

8 A. Joel.

9 Q. Joel, okay.

10 Mr. Wiles has also worked on the case, the
11 Kia case?

12 A. Yes.

13 Q. Okay. In fact, according to this invoice
14 for the period ending September 30th, 2017, he had
15 billed 54.7 hours.

16 Does that sound about right?

17 A. I don't know. I don't have the bill in
18 front of me.

19 Yes.

20 Q. Okay. His bill for this time period set
21 forth in Exhibit 5 was \$23,794.50, correct?

22 MR. LAZATIN: Who?

23 MR. EDWARDS: Mr. Wiles.

24 THE WITNESS: \$23,794.50, that's correct.

1 BY MR. EDWARDS:

2 Q. Okay. And then there's a K. Williams?

3 A. Yes.

4 Q. What's the "K" stand for?

5 A. Katie.

6 Q. Okay. She also had significant work on this
7 Kia case, correct?

8 A. She billed time to this case, that's right.

9 Q. I mean, for this time period set forth in
10 Exhibit 5 you had 15.7 hours, Mr. Wiles had 54 hours,
11 K. Williams had 45.5, correct?

12 A. I don't know. I can't see that.

13 Q. Okay.

14 A. Yes.

15 Q. Why don't you read for me the next -- the
16 next person that worked on the case and the hours
17 that they billed.

18 A. A. Farrukh, that's F-A-R-R-U-K-H, is an
19 analyst who spent 41.4 hours.

20 Q. What's the "A" stand for?

21 A. I'm not sure.

22 Q. Okay.

23 A. You want me to read the whole list here.

24 Q. Yeah. The next one, please.

25 A. C. Morley is an analyst in this time period,

1 47.35 hours.

2 H. Holland is an analyst in this time
3 period, incurred 12.9 hours.

4 I. Staeheli, S-T-A-E-H-E-L-I, incurred
5 7.2 hours.

6 And Jay Breslow incurred 21.2 hours in this
7 time period.

8 Q. Okay. And I realize I'm using the term
9 "significant," but which is subject to
10 interpretation, but it -- it appears that everyone on
11 this list on Exhibit 5 with the exception of Staeheli
12 actually put more hours in -- and Mr. Gustafson put
13 more hours into the case, at least for this time
14 period than you had, correct?

15 A. I'll have to see that. I think H. Holland
16 is also on that list.

17 Q. Okay. The remainder of the individuals,
18 though, had at least as many hours, and in some cases
19 significantly more hours than you had for the time
20 period set forth in Exhibit 5, correct?

21 A. The same or more, yes.

22 Q. Okay. And you never had any written
23 communication with any of these individuals on your
24 team?

25 A. I -- I didn't produce any -- I didn't look

1 for any written correspondence that I have with any
2 of them.

3 Q. Okay.

4 A. I didn't include those in my production.
5 I'm not -- I don't know whether I had any or not, but
6 I didn't look for those.

7 Q. Okay. Well, number 4 on the documents
8 requested from Bruce Strombom would include written
9 correspondence between you and other members of your
10 team; wouldn't you agree?

11 A. I didn't take it to mean that, no.

12 Q. Okay.

13 A. I mean, I don't -- I don't think I've ever
14 produced e-mails between myself and my teammates, and
15 I didn't in this case. I didn't look for them
16 either.

17 Q. Okay. So you read any and all
18 correspondence, documents, written materials,
19 e-mails, or other physical evidence exchanged between
20 you and anyone other than attorneys for Defendants
21 relating to your retention in this action as not
22 including e-mails between you and members of your
23 team?

24 A. Yes.

25 Q. For example -- okay.

1 A. That's how I interpreted that.

2 Q. Okay. Okay. Number --

3 MR. LAZATIN: Let me just clarify, I
4 believe -- I mean, regardless of whether -- how he
5 may have interpreted, I believe we interposed an
6 objection -- on work-product grounds on -- on that
7 particular request.

8 BY MR. EDWARDS:

9 Q. What role did J. Wiles have in the
10 preparation of your report and opinions in this case?

11 A. Joel was the manager on the case, so
12 essentially at the outset, I sort of set out the --
13 the work plan, I did that in conjunction with scroll,
14 about what we needed to do in this case to deliver
15 our work-product.

16 And then Joel's responsibility is among
17 other things coordinating the work of the analysts
18 who work on the case to basically execute the
19 analysis that -- that I've outlined, and he also
20 wrote drafts sections of the report --

21 Q. Okay.

22 A. -- at my direction.

23 Q. So there are drafts of the report that
24 Mr. Wiles would have submitted to you and then you
25 would have done what, make redlines and changes,

1 things like that?

2 A. Generally how it works is that we have one
3 copy of the report that we work on, so it's a living
4 document, and he, I think it started out in this case
5 as an outline that I put together, he added sections,
6 wrote sections to it. I would review those and ask
7 questions, provide edits, change the content to -- to
8 turn it into my final report.

9 Q. Okay. And what -- what's his educational
10 background, if you know, Mr. Wiles?

11 A. He has a Ph.D. in economics from Stanford.

12 Q. Okay. Is there anyone of the professionals
13 listed here that worked on this case in Exhibit 5
14 that is a conjoint analysis survey design expert?

15 A. Not that I'm aware of.

16 Q. Okay. I mean, any -- is there anyone beyond
17 Exhibit 5, is there anyone on the team of individuals
18 that worked with you to prepare the report in this
19 case that holds him or herself out as a conjoint
20 analysis design expert?

21 A. Not that I'm aware of.

22 Q. Okay. Number 5 on the document request you
23 have provided us with a current C.V., correct?

24 A. That's correct.

25 Q. Publications authored by you in the previous

1 ten years if different from the version attached to
2 your report.

3 Tell me about publications you've had in the
4 past ten years.

5 A. Well, I think they're all listed on my C.V.
6 I think there's a book chapter that -- that came out
7 between the time of my issuance of my report and this
8 current updated C.V. I think that's the only change
9 with respect to publications.

10 Q. Okay. And what's the name of that book that
11 came out subsequent to you issuing your report?

12 A. The book is called: Calculation of Lost
13 Profits Damages - Theory and Practice, First Edition.

14 Q. And which chapter did you author?

15 A. I wrote the chapter titled: Using Cash
16 Flows Versus Accrual Net Income. I was a co-author
17 on that with one of my colleagues.

18 Q. Okay. And is the list that you've provided
19 us of all other cases, which we asked about in
20 number 7 on the document request, a list of all other
21 cases in which during the previous four years you
22 testified as an expert at trial or by deposition, is
23 that current?

24 A. Yes. And that's contained within my C.V.

25 Q. Okay. Number 8 asks about (as read):

1 All reports by you -- prepared by
2 you for Defendants in any of the
3 cases in which, during the previous
4 four years, you testified as an
5 expert at trial or by deposition.

6 Do you see that?

7 A. Yes.

8 Q. Did you make a search for those documents?

9 A. I did.

10 Q. Okay. Did you provide them?

11 A. There were none.

12 Q. Okay. You've never provided -- you've never
13 done any work for Kia before this case?

14 A. I have worked for Kia before this case.

15 Q. Okay. In what capacity?

16 A. As an expert.

17 Q. Okay. How many times?

18 A. I believe it's four times.

19 Q. Are each of those cases set forth in your
20 C.V.?

21 A. Yes.

22 Q. Okay. Do you recall the names of those
23 cases? And feel free to review your CV to refresh
24 your memory.

25 A. One is captioned Johnette Alexander versus

1 Kia Motors America.

2 Q. What page are you on?

3 A. I'm on page 15 of my C.V. And then there
4 were three other cases in different state courts
5 dealing with the same alleged defect, the first one
6 is --

7 Q. Hold on. I'm sorry to interrupt you. I'm
8 looking at page 15, and I'm trying to find the first
9 case that you mentioned.

10 A. Second to the bottom.

11 MR. CUTTONE: Johnette Alexander.

12 MR. EDWARDS: Let me see what you're
13 pointing to there.

14 Q. I see it. Thank you. That's Johnette
15 Alexander, et al., the Kia Motors America?

16 A. Inc., et al., yes.

17 Q. Okay. And I want to ask you about, you've
18 told me there were four where you previously
19 represent -- or were retained by counsel on behalf of
20 Kia?

21 A. Correct.

22 Q. Okay. This Alexander V. Kia case was
23 pending in the Superior Court of California?

24 A. Yes.

25 Q. When? Is it ongoing?

1 A. No. This was seven or -- six or seven years
2 ago.

3 Q. Okay. And this was a class case where the
4 plaintiffs alleged that class members were injured by
5 defective rear seatbelt systems in the Kia Sephia?

6 A. Yeah. Economically injured, yes.

7 Q. Okay.

8 A. Not physically injured.

9 Q. Okay. Was there an allegation of a safety
10 defect?

11 A. I don't recall. I don't think it was a
12 safety defect.

13 Q. Okay. And in that case you testified at
14 deposition and at trial?

15 A. Yes.

16 Q. Okay. And what was the scope of your
17 assignment in the Alexander V. Kia case?

18 A. I was calculating damages in that case.

19 Q. Okay. Did you rebut the plaintiff's damages
20 model?

21 A. I assume I did. I don't actually have a
22 recollection of exactly what I did in that case.

23 Q. Okay. And how did you attempt to assess
24 damages suffered class wide in the Alexander V. Kia
25 case?

1 A. I'd have to look at the report. I don't
2 frankly recall, as I sit here.

3 Q. Okay. But you testified at deposition, at
4 trial on behalf of Kia?

5 A. That's correct.

6 Q. All right. Did you ultimately determine
7 that the class members suffered for damages?

8 A. I don't recall.

9 Q. Okay. We'd have to look at the deposition
10 or trial transcript?

11 A. I think so. I would have to.

12 Q. Okay. Was this a diminution in value case?
13 Do you recall?

14 A. I think there were two theories of damage.
15 One was diminution of value and one was the cost of
16 repair and replacement, which I think the plaintiffs
17 were using sort of interchangeably. They were using
18 repair costs as a measure of diminution in value.

19 Q. Okay. And you don't -- sitting here today,
20 you don't recall any of your opinions even generally
21 as far as your conclusions in that case about
22 damages?

23 A. I really -- I don't.

24 Q. Okay. What was the second case where were
25 retained to represent Kia?

1 A. Well, I didn't represent Kia --

2 Q. I'm sorry. Retained on Kia's behalf.

3 A. Yeah. There was three of them. There were
4 the following three listed on my C.V. They all
5 involved the same underlying alleged defect, which
6 was a brake system defect in the Kia Sephia.

7 Q. Okay.

8 A. And they were Regina Little, et al., versus
9 Kia Motors America; Maria Santiago, et al., versus
10 Kia Motors America, and Samuel Bassett Kia -- versus
11 Kia Motors America.

12 Q. Okay. And those are the last four cases on
13 page 15 of your C.V.?

14 A. Correct.

15 Q. We'll identify that as KMA(Strombom)_00078.
16 Does that appear to be correct?

17 A. Yes.

18 Q. And you said braking system, but under the
19 Alexander case, it indicates that the alleged defect
20 involved a rear seatbelt system?

21 A. Yeah. The Alexander case dealt with a --
22 the seatbelt system and the other three cases that I
23 just named related to the braking system in the
24 Sephia.

25 Q. Okay. Was that a safety defect case, those

1 last three, Little and Santiago and Samuel Bassett?

2 A. I don't recall a safety component. I think
3 it was excessive wear of brake pads was the
4 allegation, and I don't recall a safety component to
5 that.

6 Q. Okay.

7 A. That's not to say there wasn't. I don't
8 recall it, though, as I'm sitting here.

9 Q. I mean, I think brake wear and I think
10 potential safety defect, but maybe that wasn't the
11 case.

12 A. I don't recall a safety component.

13 MR. EDWARDS: Okay. We've been going about
14 an hour. Let's take our first break.

15 VIDEO OPERATOR: We're going off the record
16 now at 10:30 a.m.

17

18 (Recess taken.)

19

20 VIDEO OPERATOR: We're on record. Time,
21 10:42 a.m.

22 Counsel, you may proceed.

23 BY MR. EDWARDS:

24 Q. All right. I think when we took our break,
25 Dr. Strombom, we were talking about four occasions

1 prior to this occasion where you've been retained as
2 an expert on behalf of Kia in litigation, correct?

3 A. Yes.

4 Q. Okay. Have you ever done any other work
5 whether it's in litigation or otherwise for Kia?

6 A. No.

7 Q. Okay. Have you ever done any other work
8 whether it's litigation or otherwise for Hyundai?

9 A. I've worked on the Glen case for Hyundai.

10 Q. Right.

11 A. I think that's the only case I've worked for
12 Hyundai on.

13 Q. Okay. Do you have any understanding as to
14 the kind of business relationship between Hyundai and
15 Kia?

16 MR. LAZATIN: Objection, outside the scope,
17 foundation, speculation.

18 THE WITNESS: Well, my understanding is that
19 they basically are competitors in the United States.
20 They compete against each other, often in similar
21 classes of vehicles. But it really hasn't been the
22 focus of any -- any work that I've done, so that's --
23 that's just my general understanding.

24 BY MR. EDWARDS:

25 Q. Okay. You don't have any idea as to whether

1 there's ownership that overlaps between Hyundai and
2 Kia?

3 A. I don't.

4 MR. LAZATIN: Same objections.

5 BY MR. EDWARDS:

6 Q. Okay. All right. Number 9 of the document
7 request (as read):

8 All documents pertaining to,
9 reflecting, or supporting any
10 assumption you relied on in forming
11 your opinions in this matter.

12 Did you make a search for documents
13 responsive to number 9?

14 A. Yes.

15 Q. Okay. Did you find any documents that were
16 responsive?

17 A. I mean, there were documents that I relied
18 upon that are listed in my report. I'm not -- I'm
19 trying to think about whether they incorporate any
20 assumptions. I don't think they actually incorporate
21 any assumptions, so there wouldn't be anything
22 outside the documents that I relied upon that are
23 listed in my report.

24 Q. Okay. Are you making certain assumptions as
25 part of your opinions in this case?

1 A. Well, I mean, there are kind of economic
2 principles that I'm assuming, you know, price is
3 determined by the intersection of supply and demand,
4 you know, basic things like that.

5 Q. Okay.

6 A. The demand curve is downward sloping, those
7 types of things, but I don't think there's any -- I
8 can't think of any explicit assumptions that I made
9 that are, you know, specific to this case, the facts
10 of the case, or what have you.

11 Q. Do you make any assumptions with regard to
12 liability?

13 A. Well, as -- yes. I guess as a damages
14 expert I'm assuming that liability is -- is found,
15 such that damages become a pertinent question, so --
16 so I guess that's true, I am assuming liability as a
17 damages expert.

18 Q. Okay. Number 10 (as read) :

19 All backup data, schedules, and
20 notes pertaining to any calculations
21 you made in forming your opinions.

22 A. Yes.

23 Q. Did you make a search for documents
24 responsive to number 10?

25 A. Yes.

1 Q. Okay. Did you find any?

2 A. No.

3 Q. You didn't make any notes pertaining to any
4 calculations?

5 A. No.

6 Q. Okay. Do you know if anyone on your team
7 did?

8 A. Not that I'm aware of.

9 Q. Okay. I mean, did you ask them?

10 A. No, I didn't explicitly ask them.

11 Q. Okay. You and I can agree that -- well, let
12 me just ask you: Were there at least other people
13 that -- on your team that worked on -- had various
14 roles in developing your report and the opinions set
15 forth in this case?

16 A. I know that they worked on the opinions,
17 that they did work on the case at my direction.

18 Q. Okay.

19 A. And there were probably at least eight of
20 them.

21 Q. And at least in the case of Mr. Wiles, had a
22 role in drafting the report itself, as you told me
23 earlier, right?

24 A. That's correct.

25 Q. Did you, with regard to any of these

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1 individuals, did you ask any of them if they had
2 documents responsive to the document request?

3 A. No, I did not.

4 Q. Okay. Have any of these individuals on your
5 team seen the document request?

6 A. Yes -- yes.

7 Q. Okay. Who?

8 A. Joel Wiles and I believe Mark Gustafson as
9 well.

10 Q. Okay.

11 A. And perhaps others but those are the two
12 that I know of.

13 Q. But do you know whether the individuals that
14 saw the document request made a search for the
15 documents?

16 A. They in some cases helped me search for
17 those, yes, in our -- our case directory.

18 Q. Okay. But you don't know if any of these
19 individuals may have notes pertaining to
20 calculations, for example, responsive to number 10?

21 A. I do not.

22 MR. EDWARDS: Okay. All right. Let's go
23 ahead and make a copy of your report. The next
24 numbered exhibit in this case?

25 THE REPORTER: 6.

1 MR. EDWARDS: Number Exhibit 6.

2 (Exhibit 6 was marked for identification by
3 the court reporter and is attached hereto.)

4 MR. EDWARDS: You want a copy of the report.

5 MR. LAZATIN: Thanks.

6 BY MR. EDWARDS:

7 Q. Go ahead and take a moment or as much time
8 as you need to flip through that Exhibit 6 and make
9 sure that that is a complete and accurate copy of the
10 report that you submitted in this case.

11 Does it appear to be a complete and accurate
12 copy of the report?

13 A. Well, it is to the body of my report and
14 Appendix A and B, I think there was a copy of the
15 Scott report that was attached, my understanding, was
16 attached to my expert report.

17 Q. Right.

18 A. That's not here, but with that exception,
19 right.

20 Q. Yeah, okay. I was trying to save a little
21 paper there.

22 A. Fair enough.

23 Q. In reviewing your report, we're going to
24 come back and ask about your opinions specifically,
25 but you brought up the Scott report. The Scott

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1 report is something that you do rely upon in setting
2 forth some of your opinions in this case, correct?

3 A. Yes. It's -- it's one of the bases for some
4 of my opinions.

5 Q. Okay. Let's talk first about the -- the
6 scope of your assignment in this case, and that I
7 believe that appears on page 2 of your report,
8 specifically paragraph 4.

9 Do you see that?

10 A. Yes.

11 Q. Okay. States that you've (as read) :

12 Been retained by counsel for Kia
13 Motors America, Inc., and Kia Motors
14 Corporation to provide expert
15 testimony in this matter.

16 Specifically, I've been asked to
17 review, and where appropriate,
18 respond to the opinions presented in
19 the declarations of Steve --

20 Steven P. Gaskin and Colin B. Weir,
21 submitted on behalf of the plaintiff
22 in this matter on July 10th, 2017.

23 Is that accurate?

24 A. Yes.

25 Q. Says that you've (as read) :

1 Not been asked to analyze whether
2 the alleged defect exists or to
3 opine on this subject.

4 Correct?

5 A. Yes.

6 Q. So you offer no opinions as to liability
7 regarding this alleged defect, correct?

8 MR. LAZATIN: Objection, form.

9 THE WITNESS: I don't think so. I think
10 Gaskin and Weir are focused on -- on damages, and so
11 my analysis is not related to liability.

12 BY MR. EDWARDS:

13 Q. Okay. Do you -- have you reviewed the
14 complaint in this case?

15 A. Yes.

16 Q. Okay. Do you understand that there's
17 allegations that this constitutes a safety defect?

18 A. Yes.

19 Q. Okay. Do you have any opinion one way or
20 the other as to whether a spontaneously shattering
21 panoramic sunroof would amount to a safety defect?

22 A. No.

23 Q. Okay. I notice in the Hyundai case where
24 you were also retained, the scope of your assignment
25 was broader.

1 Would you agree with that?

2 A. Yes.

3 Q. Okay. In that case you also gave opinions
4 with regard to the -- the report of Neil Hanneman?

5 A. Yes, I believe that's right.

6 Q. Okay. Is -- is there a reason why the scope
7 of your assignment in the Kia case is limited to
8 responding to the declarations of Mr. Gaskin and
9 Mr. Weir?

10 MR. LAZATIN: Excuse me. I'm going to
11 object and caution the witness not to reveal anything
12 he learned in conversations with counsel.

13 THE WITNESS: Okay. I imagine there is a
14 reason. I don't know what that was, but I wasn't
15 asked to address that in this case.

16 BY MR. EDWARDS:

17 Q. Okay. And that's all I'm getting at. I
18 don't want to get into conversations that you've had
19 with your lawyers. If you made a conscious decision
20 not to set forth opinions with regard to
21 Mr. Hanneman, then I'd like to ask you about that,
22 but if you're telling me you just did what you were
23 asked to do in this case and limit it to that as far
24 as your assignment, which is what it sounds like,
25 then I -- I will accept that; is that correct?

1 A. That is correct, yes.

2 Q. Okay. All right. I believe I asked you
3 this as part of the Hyundai deposition, but I want to
4 make sure that you have the same opinion here.

5 Do you have any reason to think that a
6 spontaneously shattering sunroof would not startle or
7 distract a driver?

8 MR. LAZATIN: Objection, form and outside
9 the scope.

10 THE WITNESS: I -- I really don't have an
11 opinion about that.

12 BY MR. EDWARDS:

13 Q. Okay. All right. Do you have an opinion
14 one way or the other as to whether the Kia vehicles
15 at issue have a reduced market value at the point of
16 sale as a result of this defect?

17 A. That's -- that's not an opinion I'm
18 expressing in my expert report, so I -- I don't -- I
19 don't have an opinion about that.

20 Q. Okay. Would you agree that most people
21 purchasing a motor vehicle consider safety to be an
22 important factor?

23 MR. LAZATIN: Objection, form, vague,
24 foundation.

25 THE WITNESS: I mean --

1 MR. LAZATIN: Speculation.

2 THE WITNESS: -- I haven't done any sort of
3 investigation or expert inquiry about that topic. I
4 mean, I can think it's something that's at least
5 public sides by automotive companies, and it can be
6 something that people consider, but I don't have any
7 expert opinion about that.

8 BY MR. EDWARDS:

9 Q. Well, you do -- you do opine somewhat in
10 your report about Kia purchase drives, do you not?

11 A. Yes. I cite some surveys that talk about
12 what Kia service -- Kia purchase drives are.

13 Q. Right. And you've seen the results of
14 Dr. Scott's survey and you rely upon the results of
15 her survey, don't you?

16 A. Yes.

17 Q. Okay. So when I asked you during the
18 Hyundai deposition, I asked you specifically can you
19 and I agree that most consumers want to buy a car
20 that they consider to be safe, your answer was I
21 would say just what I said before, I do, you know, I
22 understand that safety is an important consideration
23 for some consumers.

24 Do you hold that same opinion today?

25 MR. LAZATIN: Objection, assumes facts,

1 vague, foundation, speculation.

2 THE WITNESS: Well, I do -- I do think that
3 it can be an important consideration for some
4 consumers and the surveys that I cite identify, I
5 think, safety feature as something that's somewhere
6 on the list of factors considered by.

7 But my point is I haven't studied that. I'm
8 not expressing, you know, a particular opinion apart
9 from the fact that I see these surveys that identify
10 that as one of the features. It wasn't the primary
11 focus of my research, but --

12 BY MR. EDWARDS:

13 Q. Right.

14 A. -- my general awareness.

15 Q. Okay. Are you married?

16 A. Yes.

17 Q. Have kids?

18 A. Yes.

19 Q. Okay. To your recollection, when you buy a
20 vehicle, do you want that vehicle to be safe?

21 A. Yes.

22 Q. Okay. And I'm assuming the same for your
23 family, right, you want members of your family to
24 drive a safe vehicle?

25 A. Yes.

1 Q. And if there is an issue with one of the
2 components of that vehicle which could potentially
3 make it unsafe, you'd like to know about that before
4 you purchase the car, I'm assuming?

5 MR. LAZATIN: Objection, beyond the scope,
6 incomplete hypothetical, assumes facts, speculation,
7 vague.

8 THE WITNESS: I'm not sure -- I'm not sure
9 how to respond to that. I -- I don't -- I'm not
10 certain what you mean by the question.

11 BY MR. EDWARDS:

12 Q. Well, I'm -- I'm just asking you: When you
13 go to purchase a car, if there is a latent defect
14 which could potentially make the vehicle unsafe,
15 would you like to know about that before you make the
16 purchase?

17 MR. LAZATIN: Objection, same objections.

18 THE WITNESS: It really depends.

19 BY MR. EDWARDS:

20 Q. On what?

21 A. On the probabilities associated with it.

22 Q. Okay.

23 A. I mean, every -- when I buy a vehicle, I
24 assume that there will be things that go wrong with
25 the vehicle and they may relate to safety. There's

1 some chance of that. I sort of recognize that as a
2 consumer. So it really depends on the -- the -- the
3 particular factors associated with any particular
4 issue.

5 Q. And I assume you're talking about whether or
6 not those factors would affect your purchase
7 decision, but wouldn't you want to at least know so
8 you could weigh those choices yourself?

9 MR. LAZATIN: Objection, beyond the scope,
10 assumes facts, incomplete hypothetical.

11 THE WITNESS: I mean, certainly with respect
12 to my expert work here, it's not anything that I've
13 investigated, nor really, you know, am I -- I'm not a
14 safety expert in vehicles. I'm a pretty analytic
15 guy, and I -- I would prefer not to know about every
16 potential safety issue of which -- in an automobile
17 there could be, you know, there could be many of
18 them, so I just -- I'll stop my answer there.

19 BY MR. EDWARDS:

20 Q. Okay. So you're saying with regard to a
21 safety defect, you'd prefer not to know?

22 A. No, that's not what I said. What I said is
23 it would depend on the probabilities, the -- the
24 significance of the negative outcome. There are, you
25 know, people who spend all their time studying

1 vehicles and I -- it's not practical to know
2 everything there is to know about a vehicle or any
3 other product that you purchase.

4 So in general, I would just say it depends.

5 Q. Okay. Do you have any opinion one way or
6 the other as to whether an auto manufacturer should
7 disclose safety defects regarding its vehicle that it
8 knows about to consumers?

9 MR. LAZATIN: Objection, outside the scope,
10 foundation, speculation, calls for a legal
11 conclusion.

12 THE WITNESS: I mean, as an economist, you
13 know, should questions are not really the questions I
14 address, so I don't have an opinion about that.

15 BY MR. EDWARDS:

16 Q. Okay. No opinion one way or the other?

17 A. No.

18 Q. Do you consider yourself a marketing expert?

19 A. Well, the disciplines of economics and
20 marketing are closely related. I consider myself an
21 economist. I certainly -- aspects of economics
22 overlap with aspects of marketing, so there's a lot
23 of common area between the two disciplines, but I
24 think if -- if I'm identifying myself as an expert in
25 either economics or marketing, it would be economics.

1 But that's not to say that there aren't
2 aspects of marketing, which I have opinions or that
3 fall within the purview of my area of expertise.

4 Q. Okay. When I took your deposition a few
5 months ago, I asked you the question: Do you
6 consider yourself a marketing expert and your answer
7 was, no, I wouldn't consider myself a marketing
8 expert, per se.

9 Is that still your answer today?

10 A. Yes. I think that was what I was attempting
11 to communicate in my response.

12 Q. Okay. Okay. Do you have an opinion as to
13 whether a conjoint survey can be properly used to
14 measure diminished value of a consumer product due to
15 a latent defect?

16 A. Yeah. I don't think that -- that conjoint
17 is incapable of measuring that singularly or in
18 combination with other models.

19 Q. Have you seen examples in a product defect
20 class action litigation context where you believe
21 conjoint analysis has been appropriately used to
22 assist in the measurement of class-wide damages?

23 A. I can't think -- I can't think of a case as
24 I sit here that I've -- that I've either read about
25 or studied where -- or that I know of, so I couldn't

1 identify such a case.

2 Q. Okay.

3 A. Not to say one doesn't exist.

4 Q. Right. You've just never come across one
5 that you, you've said, hey, that's -- that's a good
6 use of conjoint in terms of a class action defect
7 case?

8 A. Yeah. I don't recall coming across one.

9 Q. Okay. And I understand you're not a lawyer,
10 but are you familiar at all with the -- the body of
11 case law that exists which allows the results of
12 conjoint surveys to measure class-wide damages in the
13 class-action context?

14 MR. LAZATIN: Objection, foundation,
15 speculation.

16 THE WITNESS: Well, just from my general
17 awareness of this topic area, I know that courts in
18 some cases have accepted conjoint analysis, and in
19 other cases have not accepted conjoint analysis.

20 As to specifically what the conjoint was
21 used for in those cases, I have to say I don't
22 really -- I don't have any particular understanding.

23 BY MR. EDWARDS:

24 Q. Right. So you are familiar with some case
25 law with where the courts have accepted for measuring

1 class-wide damages?

2 A. Well, when you say "for measuring class-wide
3 damages," that's the part I'm not certain about
4 whether it's being used explicitly for that purpose
5 or whether it's part of a larger sort of structural
6 model and used only to estimate the demand side of
7 the -- of the market.

8 So that's my -- that's my -- that's what I'm
9 not sure about in answering your question.

10 Q. Okay. You're critical of Mr. Gaskin's
11 conjoint survey design in this case, the Kia case
12 we're here about today, and -- and also in the
13 Hyundai case, which involves a very similar
14 allegation as to the panoramic sunroof defect.

15 Would you agree with that?

16 A. Yes.

17 Q. Have you ever looked at any of Mr. Gaskin's
18 other conjoint survey designs?

19 A. No.

20 Q. Okay. Are you aware of whether he's
21 conducted other conjoint survey designs?

22 A. I think he describes some in his expert
23 report.

24 Q. Okay.

25 A. But I haven't investigated those.

1 Q. Have you reviewed any legal opinions or case
2 law analyzing the -- a conjoint survey designed by
3 Mr. Gaskin?

4 A. Not designed by Mr. Gaskin, no.

5 Q. What case law have you reviewed which
6 analyzes the validity of other conjoint surveys?

7 A. I'm thinking of a case involving John
8 Hauser, it may have been Samsung and Apple, where
9 conjoint was used as part of a bigger model.

10 Q. Okay.

11 A. That accounts for the demand side factors in
12 the market. There are others that I've read, but as
13 I sit here, I -- that's the one that comes to mind.

14 Q. So is it your opinion that conjoint itself
15 doesn't account for the demand side?

16 A. I think the way that it's being used in this
17 case it doesn't account for the demand side of the
18 market. It's a willingness to pay measure. It
19 does -- excuse me, it does account for the demand
20 side of the market.

21 Q. Okay.

22 A. It doesn't account for the supply side of
23 the market. It just -- it measures essentially
24 willingness to pay, but doesn't -- doesn't account
25 for the fact that the actual price that you would

1 observe is a function not only of demand, but also of
2 supply, and that's I think a major problem for
3 Mr. Gaskin's methodology.

4 Q. Okay. We'll come back to that. Do you have
5 any understanding as to the best practices for
6 conjoint survey design?

7 MR. LAZATIN: Objection, vague.

8 THE WITNESS: With respect to what aspect?
9 You know, there --

10 BY MR. EDWARDS:

11 Q. I'll rephrase the question.

12 Are you familiar with any of the best
13 practices for conjoint survey design?

14 MR. LAZATIN: Objection, vague.

15 THE WITNESS: Certainly -- certainly some.

16 BY MR. EDWARDS:

17 Q. Okay.

18 A. I mean, you know, surveying the appropriate
19 population would be I think one general observation.
20 That the sampling frame should correspond to the
21 population of interest.

22 I mean, there are fundamental aspects of --
23 of surveys, which is that if you're conducting a
24 survey about a consumer's choice in the marketplace,
25 construction of the choice set should as closely as

1 possible, correspond to the choice set that a
2 consumer's actually going to face in the marketplace.

3 So there are -- those are two examples.

4 There are probably others, too.

5 Q. You're familiar with the concept of
6 pretesting, and this goes beyond conjoint surveys,
7 I'm assuming, with regard to most marketing surveys,
8 are you familiar with the concept of pretesting?

9 A. Yes. I think most of, you know, pretesting
10 is a common practice and in surveys that I've
11 executed, we typically have done pretests.

12 Q. Why is it important to pretest a marketing
13 survey?

14 A. Because hopefully you'll uncover some of the
15 flaws of your survey before you roll it out to the
16 full population.

17 Q. Okay. Is that -- in your mind is that
18 considered a best practice for survey design in the
19 marketing consent to pretest, uncover those potential
20 flaws?

21 MR. LAZATIN: Objection, form.

22 THE WITNESS: I think the need for a pretest
23 can vary, depending on the setting, but in some
24 settings it is a preferred practice, I would think.

1 BY MR. EDWARDS:

2 Q. Okay.

3 A. Otherwise you may have to re-execute your
4 survey again if you discover flaws in the -- in the
5 design.

6 Q. Okay. You told me in the Hyundai deposition
7 it's often advisable for a pretest and that it's done
8 frequently. Do you agree -- is that still your
9 opinion today?

10 A. Yes.

11 Q. In the litigation context, have any of your
12 opinions ever been excluded by a court?

13 A. There's one case in which a portion of my
14 opinions were excluded. I was asked to perform some
15 probability calculations using survey data that was
16 collected by another expert, and the court ruled that
17 the results of that survey were unreliable.

18 So my calculations -- so that survey data
19 were excluded, and my opinions relied upon were also
20 excluded, though the rest of my testimony was
21 admitted.

22 Q. What case was that?

23 A. That was Helmer versus Goodyear.

24 Q. Is that listed on your C.V.?

25 A. Yes.

1 Q. Where was that case pending?

2 A. In Denver, federal court in Denver.

3 Q. Okay.

4 A. And that's the only instance, to my
5 knowledge, that my opinions have been -- an opinion
6 of mine has been excluded.

7 Q. Who was the survey expert in that case?

8 A. I forgot his name.

9 Q. Okay. Was it Mr. Gaskin?

10 A. No.

11 Q. It wasn't Carol Scott?

12 A. No.

13 Q. Do you remember where that survey expert was
14 from, city?

15 A. He was from Ohio.

16 Q. Okay. Do you recall which law firm retained
17 you in that case?

18 A. I believe it was Ballard Spahr.

19 Q. All right. What did you do to ensure that
20 the survey -- well, sorry, let's back up.

21 You rely upon results of a survey in this
22 case that Dr. Scott performed in the Hyundai matter,
23 correct?

24 A. Yes.

25 Q. Okay.

1 A. Among -- among other things, but yes, I do
2 rely on that.

3 Q. Okay. Dr. Scott didn't do a separate survey
4 which involved Kia vehicles, right?

5 A. That's correct, to my knowledge.

6 Q. Okay. And is -- is there a reason that you
7 believe it appropriate to rely on the results of a
8 survey involving only Hyundai vehicles, and
9 extrapolate those results over to Kia vehicles?

10 A. Yes. I think there are -- there are reasons
11 why that survey is informative to the question
12 related to Kia vehicles.

13 Q. Okay. And explain to me what those reasons
14 are.

15 A. Well, primarily because the -- the alleged
16 defects in the two cases is very similar with respect
17 to shattering sunroofs, I think that's the primary
18 thing, so the survey is asking about the consequences
19 of knowledge or lack of knowledge about the alleged
20 defect, which is very similar between the two cases.

21 The Hyundai vehicles were, 95 percent of
22 them were in the same NADA category as the Kia
23 vehicles, so these are similar vehicles with respect
24 to their classification, so small surveys or -- or
25 midsized vehicles, many of the people that for whom

1 we have information in this case who ended up buying
2 a Kia, considered Hyundai's as part of their decision
3 set as possible vehicles. And that includes the
4 named plaintiff in that -- in this case, Mr. Kondash.

5 So for all those reasons I think that the
6 outcomes of the -- the Scott survey are pertinent and
7 informative to the questions that -- for the reason
8 that I'm relying on them in this case.

9 Q. So what did you do, if anything, to
10 determine whether purchasers of Hyundai vehicles
11 would have the same relevant preferences as
12 purchasers of Kia vehicles?

13 A. Well, I looked at a survey of the -- the
14 purchase preferences of the two different groups of
15 vehicles, the Hyundai vehicles, and the Kia vehicles,
16 and I compared those across comparable models and
17 found that for those vehicles for which there's a
18 direct comparator between the Kia and the Hyundai
19 that is within the same vehicle category, classified
20 by NADA, that the top ten purchasing reasons were
21 anywhere between a match of eight or a match of all
22 ten criteria expressed by those two different groups.

23 So that is one of the elements that I looked
24 at to confirm that these consumers had similar
25 preferences and similar features that were important

1 to them in their purchase of vehicles.

2 Q. So am I correct to assume or to extrapolate
3 from that that in your opinion Mr. Gaskin, when he
4 fields his survey, could appropriately survey both
5 Hyundai purchasers and Kia purchasers in his survey
6 for either the Hyundai or the Kia case?

7 MR. LAZATIN: Objection, assumes facts,
8 misstates testimony.

9 THE WITNESS: So -- so you're asking me --
10 well, to my knowledge Mr. Gaskin doesn't propose to
11 in this case -- in the Kia case, does not propose to
12 survey Hyundai owners in his conjoint analysis.

13 BY MR. EDWARDS:

14 Q. Right.

15 A. So was that a premise of your question
16 because I don't think that's the case.

17 Q. It wasn't a premise of my question. I just
18 want to make sure I understand your opinion. I -- I
19 understand, at least I think I understand that you
20 feel like the relevant preferences between Kia
21 purchasers and Hyundai purchasers are the same --

22 A. Well --

23 Q. -- which is why you're comfortable using
24 Carol Scott's Hyundai survey results in your Kia
25 opinions, correct?

1 MR. LAZATIN: Objection, vague, assumes
2 facts, misstates.

3 THE WITNESS: Yeah. I don't think I said
4 the same. I think I said similar or I should say
5 similar. If I said the same, I should have said
6 similar.

7 BY MR. EDWARDS:

8 Q. Okay.

9 A. And that's one reason why I think it's
10 appropriate for the use that I'm using these survey
11 results. Mr. Gaskin does something that's quite
12 different from what I'm doing, and I think it's --
13 there's a different criteria that should apply in the
14 case of a conjoint analysis that's being used to
15 estimate a very specific damage number for a
16 particular group of vehicles versus the general sort
17 of qualitative conclusions that I'm drawing from the
18 Scott report.

19 Q. Do you have any opinion as to whether
20 Mr. Gaskin is surveying the correct pool of people in
21 his proposed survey?

22 A. I don't believe he is. I think he's
23 proposing to survey both consumers who purchased and
24 did not purchase a panoramic sunroof. The class only
25 includes those who purchased a panoramic sunroof so

1 to the extent that there are differences between
2 those two populations, which there presumably are,
3 because they came to different choices with respect
4 to the sunroof, which is the Kia, you think, feature
5 in this litigation, I think it's critical that his
6 sample be limited to those who actually are class
7 members for purposes of a conjoint analysis.

8 Q. Would you agree that those individuals
9 purchasing a -- a Kia vehicle at the time of purchase
10 would have had the option between purchasing a
11 vehicle with a panoramic sunroof and one without, for
12 the most part?

13 A. I don't know that to be the case. I know
14 that -- I mean, the panoramic sunroof, it really
15 would depend on the individual, what they were
16 considering, what set of vehicles they were
17 considering, what trim levels, and what have you.

18 Q. Okay.

19 A. So any option, I wouldn't say as a general
20 proposition that I agree with that.

21 Q. Right. Are you saying that you disagree
22 with that or you just don't know?

23 MR. LAZATIN: Objection, form.

24 THE WITNESS: I'm saying you would have to
25 do an individualized inquiry to know if that's true

1 for any particularized consumer and I haven't done
2 that, nor has Mr. Gaskin.

3 BY MR. EDWARDS:

4 Q. So you don't know?

5 A. So I don't know.

6 Q. Okay. What did you do to verify that
7 Dr. Scott designed a reliable survey before you
8 decided to rely on the results of that survey?

9 A. Well, I reviewed her survey, both the
10 specific questions in her survey and her narrative
11 description of what she was doing and why she was
12 doing it with each of those questions, so I -- and
13 also I think observing the population that she was
14 surveying. I think those are the main things that
15 come to mind, as I sit here, that I did.

16 Q. Do you know what Dr. Scott was provided in
17 terms of documents from Hyundai to be able to --
18 which enabled her to reach out to the survey
19 population that she sampled?

20 A. I think she described receiving a -- some
21 sort of list of consumers who had purchased the class
22 vehicles in the Hyundai case, and that she selected a
23 sample or the firm that executed the survey, selected
24 a sample from that group.

25 Q. Right. Do you know whether Mr. Gaskin has

1 been provided with that same list?

2 A. I don't.

3 Q. But your opinion is with regard to the
4 survey population if Mr. Gaskin surveyed the same
5 population as Dr. Scott, you would be okay with that
6 survey population for his survey?

7 MR. LAZATIN: Objection, vague, misstates
8 testimony.

9 THE WITNESS: No. I -- that's not what I
10 said, I don't believe. He has a very -- he has a
11 different purpose. He's doing a conjoint analysis to
12 evaluate damages on a Kia proposed class members, so
13 I think that's the population he should be pulling
14 from for the purpose of a conjoint analysis, and
15 that's a different population than Dr. Scott injured.

16 BY MR. EDWARDS:

17 Q. Because she only surveys Hyundai purchasers?

18 A. That's correct. Hyundai purchasers who
19 purchased a vehicle with a panoramic sunroof.

20 Q. So you believe if Mr. Gaskin surveys -- in
21 this case surveys Kia purchasers who purchased a
22 vehicle with a panoramic sunroof that would be a
23 correct population to sample for his survey?

24 A. I believe so, yeah, proposed class members.

25 Q. Okay. What is -- what is it that

1 Dr. Scott's survey seeks to measure?

2 A. Well, she measures a few things in her
3 survey. I don't have a report in front of me, but my
4 recollection is she attempts to measure the -- the --
5 well, one aspect of her survey are features that were
6 considered in the purchase decisions. And she cuts
7 that a couple of different ways, is my recollection.

8 And then she also looks at how different
9 disclosures would affect the consumers' propensity to
10 purchase the vehicle.

11 Q. And what's your understanding of her
12 conclusion?

13 A. Well, as I sit here without her report in
14 front of me, she concludes essentially that there's
15 no statistically significant difference between -- in
16 the propensity to purchase between the three groups
17 that she tests, a group with no disclosure, a group
18 with disclosure that doesn't specify a percentage,
19 and a group that in which a disclosure does specify a
20 percentage.

21 I think the exception is that between the
22 second and third of those categories in one instance
23 there is a marginally statistically significant
24 difference that's between the percent for which a
25 percentage is shown, and the -- in the disclosure and

1 the percent for which a percentage is not shown in
2 the disclosure.

3 Q. Right. Did you review the actual slides
4 from the survey which purportedly included the
5 disclosure about the panoramic sunroof defect?

6 A. I don't believe so. I reviewed a report
7 which has the text, but I don't think it has the
8 actual, or the version I got at least didn't have the
9 actual slides, screens.

10 Q. Okay. Well, let me ask you about that.

11 MR. EDWARDS: Let's -- let's mark this as
12 the next numbered exhibit, please.

13 THE REPORTER: 7.

14 MR. EDWARDS: 7.

15 (Exhibit 7 was marked for identification by
16 the court reporter and is attached hereto.)

17 MR. EDWARDS: I'm sorry. Carlos you'll have
18 to share on this one. I thought I had another copy.

19 Q. So I'll give you a second to take a look at
20 that, and ask if you've seen Exhibit 7 before?

21 A. I haven't seen this specific screenshot
22 before, to my recollection.

23 Q. Okay. I will represent to you that this
24 according to Dr. Scott is a image of the -- the
25 screen that includes marketing information about the

1 panoramic sunroof, and below that one of the two
2 disclosures related to the defect at issue for the
3 Hyundai vehicle.

4 But you've never seen the disclosure that
5 she listed here to provide any opinions as to whether
6 you would consider that to be an adequate disclosure,
7 correct?

8 A. No. I -- I saw the disclosure, the two
9 disclosures were -- were presented in her report.
10 So -- so I have seen these disclosures before.

11 Q. Okay. So you've seen the text of the
12 disclosure, but until today you hadn't seen the
13 manner in which it was presented on the slides to the
14 people that took the Dr. Scott survey?

15 A. To my recollection, yes.

16 Q. Okay. Do you have any opinion as to whether
17 this is an accurate description of the -- the defect
18 at issue based on your review of the complaint and
19 the other materials in this case?

20 A. Well, I think Dr. Scott said that she sort
21 of modeled the language after -- after language in
22 the complaint in the Hyundai case, and it comports
23 with my general understanding of -- of what the
24 allegations were, so I don't have any reason to
25 believe it's not accurate. It certainly corresponds

1 to my understanding of the alleged defect.

2 Q. You see the sentence there in the defect
3 description where it says (as read):

4 The glass could shatter and break
5 into small round pieces which could
6 fall into the vehicle.

7 A. Yes.

8 Q. Have you seen any materials in this case
9 which support that description of small round pieces?

10 A. I've seen purchases of -- of the tempered
11 glass that's shattered, and it -- by -- based on
12 those pictures, it breaks, and in my experience it
13 breaks into small -- small pebble-like pieces, so it
14 seems like a reasonable description to me as a --
15 sort of as a layman on that topic.

16 Q. You've read the Tom -- the Tom Kondash
17 deposition, haven't you?

18 A. Yes.

19 Q. Do you recall the testimony about the
20 laceration that his wife received when their
21 panoramic sunroof exploded?

22 A. Yes, generally.

23 Q. In your experience, I think that's the word
24 you used earlier, are small round pieces consistent
25 with lacerations?

1 MR. LAZATIN: Objection, foundation,
2 speculation, outside the scope.

3 THE WITNESS: I really -- I really -- I
4 don't have an opinion about that. I mean, one way or
5 the other. It's not anything that I've investigated.

6 BY MR. EDWARDS:

7 Q. Right.

8 Do you have any opinion as to whether this
9 description here that we've marked -- that Dr. Scott
10 set forth and we've marked as Exhibit 7 conveys to
11 Respondents the possibility of lacerations?

12 A. I don't.

13 Q. You just don't have an opinion one way or
14 the other?

15 A. I don't.

16 MR. EDWARDS: Go ahead and mark this as
17 Exhibit 8.

18 MR. LAZATIN: Just a second let me see that
19 for a second. So, Adam, we have a bit of a problem
20 here, which is that this is the version with the
21 percentage risk of sunroof failing percentage, which
22 is -- has been redacted in this case, in the material
23 that Dr. Strombom relied on because it's confidential
24 business information from the Hyundai case, so he
25 can't be seeing --

1 MR. EDWARDS: From the --

2 MR. LAZATIN: -- from the Hyundai case, the
3 Glen case, so he can't be seeing and this can't be
4 going into the record in the Kia cases that's going
5 to be available, you know, to Kia, to folks at Kia.

6 MR. EDWARDS: All right. That's fair
7 enough. I'll withdraw Exhibit 8.

8 THE REPORTER: Give it back to me for a sec.

9 MR. LAZATIN: Sure.

10 BY MR. EDWARDS:

11 Q. So you talked about two separate disclosures
12 that you reviewed in the Scott report earlier, in
13 your testimony earlier, correct?

14 A. Yes.

15 Q. Actually, three. Well, one which talked
16 about the panoramic sunroof, one disclosure which you
17 just reviewed, and we've marked as Exhibit 7?

18 A. Yes.

19 Q. And a third disclosure that you -- that you
20 saw in her report, correct?

21 A. Yeah. You can call it a third disclosure or
22 I think of the first one as no disclosure, but --

23 Q. Right.

24 A. -- however you want to think about it, yes.

25 Q. And what was the difference between the

1 second and third disclosures?

2 A. The difference was that in one of those two,
3 there was a -- I understand there was a specific
4 percentage that indicated kind of the frequency of --
5 of this shattering of the glass.

6 Q. Okay.

7 A. In the version I reviewed, that percentage
8 was redacted, so I don't know exactly what that was.

9 Q. Okay.

10 A. But I understand there was a percentage in
11 the survey that she actually administered.

12 Q. Fair enough.

13 And -- and the percentage is not what I was
14 going to ask you about, so we can avoid that, but so
15 I will -- I will represent to you that other than
16 that percentage, both of the two disclosures that
17 consumers would have seen regarding this defect
18 involve the description of small round pieces.

19 Do you have any reason to disagree with that
20 based on your recollection and reading of her report?

21 A. No, not based on my recollection.

22 Q. Do you know what Dr. Scott did, if anything,
23 to ensure that her survey respondents actually read
24 disclosure pertaining to the defect at issue?

25 A. I know at least some things that she did

1 with respect to that. In particular at the end, she
2 asked a question that was designed to identify
3 participants who may not have read the detail on
4 the -- on the panoramic sunroof, and then I think she
5 excluded anyone that fell under that category.

6 She had two or three tests that she
7 performed that she described in her report to try
8 and, you know, make sure that there weren't any
9 people in that category.

10 So that is -- that's what I'm aware of, as I
11 sit here, about what she did to ensure that people
12 were aware of that, of the sunroof feature in that
13 disclosure.

14 Q. Do you know what the results of Dr. Scott's
15 free test would have shown?

16 MR. LAZATIN: Objection, assumes facts.

17 BY MR. EDWARDS:

18 Q. Let me ask you: Do you know whether
19 Dr. Scott conducted a pretest?

20 A. I don't recall as I sit here. I'd have to
21 look at her report.

22 Q. A pretest is one of the ways that the
23 surveyor could determine whether the -- the key kind
24 of disclosure at issue here was featured prominently
25 enough so as to be seen by the survey pool.

1 Would you agree?

2 MR. LAZATIN: Objection, vague.

3 THE WITNESS: Well, the idea with the
4 pretest is that you can discover that before you roll
5 out the survey.

6 BY MR. EDWARDS:

7 Q. Right.

8 A. And so you either discover it in a pretest
9 or you discover it when you roll out the actual
10 survey, so you could discover it in either of those
11 contexts, but it's -- it's -- it may be more
12 economically efficient to discover it in a pretest
13 before you roll out the entire survey, and that's --
14 that's why a pretest is usually done.

15 Q. Okay. After the survey questions are asked
16 and you gather your result, it's certainly possible
17 to ask each of the survey respondents if they recall
18 seeing the disclosure about the panoramic sunroof
19 defect, isn't it?

20 A. I'm not aware of any reason that you
21 couldn't do that. I don't know whether that's a --
22 a -- I don't really -- I don't really know whether
23 that's something that you should do or not, to be
24 honest, in terms of survey design.

25 Q. Well, if Dr. Scott would have done that,

1 we'd know what percentage of the survey pool that
2 took her survey actually saw the disclosure, wouldn't
3 we?

4 MR. LAZATIN: Objection, assumes facts.

5 THE WITNESS: I'm not sure that's the case.
6 I mean, there's issues with self-reporting and -- and
7 recollection, you know, when people are asked a
8 question about something they've read, did you see
9 this or did you not see it?

10 There may -- you know, there may be reasons
11 why people don't give their truthful answer or may
12 not recall, so I'm not certain that asking that
13 question is necessarily the final word on whether a
14 consumer actually observed it or not. I think that
15 was -- I don't know, I haven't talked to Dr. Scott,
16 but I imagine that may be one reason why she
17 attempted to identify those people in the way that
18 she did.

19 BY MR. EDWARDS:

20 Q. Sure. There's always going to be a
21 possibility is that survey respondents don't recall,
22 but it would provide us data, wouldn't it, useful
23 data, about -- about the percentage of people that
24 actually saw the disclosure, if they were asked at
25 the end of the survey?

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1 MR. LAZATIN: Objection, assumes facts.

2 THE WITNESS: Well, it would provide data.

3 As to whether it would be useful or not, I'm not --

4 BY MR. EDWARDS:

5 Q. Right.

6 A. That's the issue. I think there are
7 concerns about that kind of self-reporting being
8 unreliable.

9 MR. EDWARDS: Okay. Let's go off the record
10 for a second.

11 VIDEO OPERATOR: Going off record. Time
12 now, 11:41. This ends Media Number 1.

13

14 (Recess taken.)

15

16 (Whereupon at the hour of
17 11:50 a.m., a luncheon recess was
18 taken. The deposition was resumed
19 at 12:52 p.m., the same persons
20 being present.)

21

22 VIDEO OPERATOR: We are on record. Time now
23 12:52 p.m.

24 This begins Media Number 2.

25 Counsel, you may proceed.

1 BY MR. EDWARDS:

2 Q. All right. All right. Dr. Strombom, we're
3 back on the record, and I'd like for you to go back
4 to your report, Exhibit 6, I believe, and just as an
5 overview, I'd like to start with the -- the table of
6 contents where you start setting forth your -- your
7 opinions there at Roman numeral 4.

8 Do you see that?

9 A. Yes.

10 Q. Okay. And then below that you have -- well,
11 let me ask you, first, about number 4. It's your
12 opinion that determining the prices paid for class
13 vehicles would require individual inquiry, correct?

14 A. Yes.

15 Q. That is also an opinion that you provided in
16 the -- the Hyundai matter; is that correct?

17 A. I believe so.

18 Q. Okay. Under Roman numeral 5, you list four
19 subsections, A, B, C, and D, and I'll ask you about
20 those individually, okay?

21 A. Okay.

22 Q. You state there that Mr. Gaskin ignores
23 differences in consumer preferences and valuations of
24 the alleged defect.

25 Is that your opinion?

1 A. Yes.

2 Q. Okay. And you had that same criticism in
3 the Hyundai case, correct?

4 A. I don't actually recall, but I know that
5 he's using the same methodology, so I believe I did.

6 Q. Okay. Under B, Mr. Gaskin does not consider
7 that automobiles are complex goods and that the
8 panoramic sunroof was bundled with other features.
9 That's also a criticism of Mr. Gaskin's survey that
10 you had in the Hyundai case, correct?

11 A. It may be. I think it was. I don't
12 actually recall.

13 Q. Well, I can -- I can probably pull out your
14 report here in the Hyundai case, so we can verify
15 that.

16 Go ahead and mark this as the next numbered
17 exhibit.

18 MR. LAZATIN: Can we -- just one minute. I
19 don't know if anything was redacted from that report
20 that runs into the same issue in terms of
21 confidentiality that's going to become part of the
22 record in this case, so check that, or if you want to
23 just read from it.

24 MR. EDWARDS: Well, I mean, it's his report,
25 so I wouldn't be revealing anything --

1 MR. LAZATIN: To him, but it's going to
2 become part of the record in the Kondash case that is
3 available to Kia to look at in the Kondash case,
4 that's all I have --

5 MR. EDWARDS: Rather than making it an
6 exhibit, I'll be glad to just ask you about it. Does
7 that satisfy your --

8 MR. LAZATIN: Yeah. All right. We can
9 check, but it might take a little bit.

10 BY MR. EDWARDS:

11 Q. So I asked you about, "A," in your -- in
12 your report in the Kia case (as read):

13 Mr. Gaskin ignores differences in
14 consumer preferences and valuations
15 of the alleged defect.

16 I will show you your report from the Hyundai
17 case under Section 7(a) where you use the exact same
18 words. Can you just verify that with me.

19 A. Yes.

20 Q. Okay. So, in fact, your criticism of the
21 Gaskin report in the Hyundai case was -- you use
22 exact same words, actually (as read):

23 Mr. Gaskin ignores differences in
24 consumer preferences and valuations
25 of the alleged defect.

1 A. At least in this summary and heading, yes.

2 Q. Okay. And then feel free to take a look at
3 the Hyundai report as needed there, I'm now looking
4 at "B" (as read) :

5 Mr. Gaskin does not consider that
6 automobiles are complex goods and
7 that panoramic -- and that the
8 panoramic sunroof was bundled with
9 other features.

10 That is also the same criticism that you had
11 in the Hyundai case, identical in terms of words,
12 right?

13 A. Yes.

14 Q. Okay.

15 A. In the heading, that's correct.

16 Q. Okay. Look at the heading for "C"
17 (as read) :

18 Mr. Gaskin's method cannot
19 allocate damages for purchasers of
20 used vehicles.

21 That is your -- that is one of your
22 criticisms in the Kia case, correct?

23 A. Yes. Used class vehicles, that's correct.

24 Q. Okay. And you have the same criticism in at
25 least in the table of contents, use the exact same

1 words when you provided opinions in the Hyundai case,
2 correct?

3 A. That's correct.

4 Q. And number "D," I'm sorry, letter "D," in
5 the Kia case we're here about today, you set forth
6 your criticism (as read):

7 Mr. Gaskin's method is not

8 applicable to individuals who leased
9 class vehicles.

10 Do you see that?

11 A. Yes.

12 Q. Okay. And you had the -- the same criticism
13 in the Hyundai case and used the same words in your
14 report, didn't you?

15 A. Yes, for the heading, I did.

16 Q. Okay. I'm looking now in your Kia report
17 Roman numeral VI(a), you said there is that
18 (as read):

19 Mr. Gaskin's survey can only be
20 used to calculate damages if
21 consumers had no knowledge of the
22 alleged defect at the time of the
23 initial purchase.

24 Do you see that?

25 A. Yes.

1 Q. And you had the same criticism in the -- the
2 Hyundai case, didn't you?

3 A. That's right.

4 Q. Okay. And also used the same words in the
5 index?

6 A. Yes.

7 Q. Okay. And, finally, with regard to number
8 "B," under Roman numeral VI (as read) :

9 Some putative class members may
10 have been aware of the alleged
11 defect.

12 That's, I believe, the last criticism that
13 you set forth in your table of contents for your
14 report in the Kia case, correct?

15 A. Yes.

16 Q. And, again, you had that same criticism in
17 the Hyundai matter and set forth the -- the same
18 language in the table of contents of your report in
19 that case?

20 A. That's correct.

21 Q. Okay. And I think we already covered this,
22 but in the Hyundai case you also had some opinions
23 with regard to the Hanneman report, but you don't set
24 forth any of those criticisms in the -- in the Kia
25 case, right?

1 A. That's correct.

2 Q. Because it wasn't part of your assignment?

3 A. Correct.

4 Q. And going through all of these opinions in
5 your index, understanding that you expound upon those
6 opinions in the body of the report itself, but does
7 that encompass all of your opinions that you set
8 forth in your report in the Hyundai case? I'm sorry,
9 in the Kia case?

10 A. Yeah. I believe all my opinions would fall,
11 you know, into those categories.

12 Q. Okay. If you would, turn to page 9 of your
13 report, under Section A, there in bold on your Kia
14 report you state (as read) :

15 Mr. Gaskin ignores differences in
16 consumer preferences and valuations
17 of the alleged defect.

18 Do you see that?

19 A. Yes.

20 Q. Then in paragraph 27 on the 11th line down
21 you state (as read) :

22 Even lacking a formal test from
23 the conjoint analysis, it is
24 undoubtedly the case that individual
25 putative class members would place

1 different valuations on the alleged
2 defect, just as they place different
3 valuations on other attributes of
4 class vehicles.

5 Do you see that?

6 A. Yes.

7 Q. And why is this undoubtedly the case in your
8 opinion?

9 A. Because different consumers perceive value
10 differently. They have different assessments of --
11 of risk tolerance and risk preferences, and because
12 those vary across consumers, their valuation of the
13 alleged defect would also vary.

14 Q. Okay. And you believe that Gaskin's survey
15 ignores these differences in consumer preferences?

16 A. Yes. His methodology does ignore them. He
17 calculates an average price decline diminution in
18 value, and he applies that equally across or he
19 purports that he'll be able to apply that equally
20 across all class members within the three categories
21 of surveys that he conducts.

22 Q. Is it correct in your opinion to refer to
23 differences in valuations of the alleged defect or
24 attributes as heterogeneity?

25 A. Yes. I think that -- that's -- that's what

1 heterogeneity can mean, that there's differences
2 across different individuals or different
3 observations.

4 Q. Okay. How should the Gaskin conjoint
5 survey, in your opinion, address the heterogeneity
6 that you've described?

7 A. Well, I don't think I'm offering an
8 affirmative opinion about how he should do his
9 conjoint analysis. I'm -- I'm observing that his
10 analysis doesn't account for differences across
11 consumers, which undoubtedly do exist, and therefore,
12 he's not accurately measuring the harm if any -- or
13 the injury if any suffered by any particular class
14 remember.

15 Q. I know in your report you're not setting
16 forth how it -- how it should be done, but do you
17 know -- are you able to offer any opinion as to how
18 the conjoint survey should address this
19 heterogeneity?

20 A. Well, the conjoint survey does provide
21 analysis at the individual consumer level, so the
22 implication of that is that you could make that
23 determination using a conjoint survey, but you would
24 need to survey all the class members, so it would be
25 an individualized inquiry across all class members is

1 one way it could be addressed using a conjoint
2 approach.

3 Q. And if this -- if the goal is to measure
4 damages for the class, class-wide damages, though,
5 how is that helpful?

6 MR. LAZATIN: Objection, vague, ambiguous,
7 calls for a legal conclusion.

8 THE WITNESS: Well, you would -- you would
9 be measuring it for each individual in the class.
10 That would be a way to do it.

11 BY MR. EDWARDS:

12 Q. Right. But if the goal is to measure
13 class-wide damages, in other words, measure damages
14 to an entire class of people, why in your opinion is
15 it necessary to calculate individualized damages as
16 you've stated?

17 MR. LAZATIN: Objection, vague, assumes
18 facts, misleading.

19 THE WITNESS: The -- the -- because you
20 would -- because each consumer has a different
21 valuation, or can have a different valuation of the
22 alleged defect. To make that determination you would
23 need to survey every member of the purported class to
24 make that determination, and then you could sum those
25 across all class members and arrive at a class-wide

1 value. And that is the only -- that is one way I
2 guess that you could answer the question about
3 whether all consumers in the class were harmed, and
4 if they were harmed, by what amount.

5 I mean, that's -- that's a way to use
6 conjoint to answer those questions.

7 BY MR. EDWARDS:

8 Q. Okay. So you could individually survey
9 everyone in the proposed class and then you would add
10 that number up and that would be your class-wide
11 damages?

12 A. Well, I think there are other problems
13 with -- with Mr. Gaskin's survey and approach, so
14 I -- I don't think that would be -- that would be
15 sufficient to correct the problems that exist in the
16 Gaskin methodology.

17 Q. Right. So is it -- is it your opinion that
18 any time a product defect case involves or has a
19 degree of heterogeneity, it would require that the
20 survey expert individually survey each member of the
21 proposed class; is that fair?

22 MR. LAZATIN: Objection, form.

23 THE WITNESS: Well, first of all, I don't
24 think it's necessary that conjoint be -- be used.
25 There are other methods of calculating damages that

1 don't involve a survey, and it would depend on the
2 particular facts of the case as to whether a conjoint
3 would be sufficient or whether the heterogeneity is
4 such that it would require that.

5 So I don't think there's a general answer to
6 that question. I think it depends on the facts of
7 the case.

8 BY MR. EDWARDS:

9 Q. Right. When you say it's undoubtedly the
10 case that there is heterogeneity --

11 A. Yes.

12 Q. -- that consumers would place different
13 values on this defect. What test -- what testing
14 have you done to verify that?

15 A. Well, I think just as a general proposition,
16 in my experience, that would be true. But in this
17 case, for example, Mr. Kondash's claim that the value
18 of the vehicle that he has, to him with the alleged
19 defect is zero, that it's basically worthless to him,
20 but yet we see positive values for these vehicles
21 changing hands in the -- in a used car market.

22 So that's -- that's a demonstration that
23 there is heterogeneity, just as you would expect, for
24 not only this defect but any kind of component of a
25 complex good, just based upon economic theory.

1 Q. Well, and that's what I -- that's what I
2 want to ask you about. Is it safe to assume that
3 there's always going to be heterogeneity when we're
4 talking about how consumers value various attributes
5 of a complex good?

6 A. I think economic theory would indicate that
7 that's the case. I think I wrote a similar article
8 from '77 from Professor Lancaster that kind of set
9 forward this idea about complex goods and the fact
10 that individual consumers place different values on
11 different attributes, and they put forward a whole
12 economic theory based upon that.

13 And it just -- it also just makes common
14 sense that, you know, when you buy a car, you might
15 focus on one aspect of it, and when I buy a car I
16 might focus on a different aspect, and have ascribed
17 different values to different components.

18 Q. Right. So in your opinion, conjoint surveys
19 shouldn't be appropriately used or aren't
20 appropriately used to measure class-wide damages
21 where you're dealing with a complex good in this
22 heterogeneity we've talked about?

23 MR. LAZATIN: Objection, misstates, assumes
24 facts.

25 THE WITNESS: I wouldn't say that. I would

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1 say the way that Mr. Gaskin is proposing to use it is
2 inappropriate. I wouldn't rule out that it could
3 appropriately be used in a class-wide damages study.

4 BY MR. EDWARDS:

5 Q. Can you give me an example of a major
6 consumer good on the market today where there are not
7 differences in consumer preferences for various
8 attributes?

9 A. I think as a general rule if it's a complex
10 good, there are -- there are different weights that
11 consumers place on or values that different consumers
12 place on different attributes and different negative
13 values that they might place upon an alleged defect
14 in a given product, so I think heterogeneity is
15 common.

16 Q. So you're not able to give me an example of
17 a major consumer good on the market where there are
18 not differences in consumer presences for various
19 attributes?

20 MR. LAZATIN: Objection, form.

21 THE WITNESS: No, not as I sit here.

22 BY MR. EDWARDS:

23 Q. Okay.

24 A. It's an empirical question. That's --
25 conjoint is sometimes used to quantify the

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1 heterogeneity across consumers, so I could test it
2 for any particular product, but I'm not aware, as I
3 sit here, of anywhere I wouldn't expect that to be
4 the case.

5 Q. Okay. How would you pose to measure
6 class-wide damages to a group of consumers that
7 overpaid for a product due to a latency safety defect
8 assuming that there is always going to be differences
9 in consumer preferences?

10 MR. LAZATIN: Objection, assumes facts,
11 outside scope, incomplete hypothetical.

12 THE WITNESS: Well, I haven't -- I haven't
13 attempted to put forward a determinative methodology,
14 you know, in general or in this case in particular,
15 with respect to how you should go about it.

16 So I don't -- as I sit here, I don't have an
17 answer to your question.

18 BY MR. EDWARDS:

19 Q. Right. As you sit here today, you're
20 critical of Mr. Gaskin's proposed methodology but you
21 can't offer any examples of how class-wide damages
22 could be appropriately measured in this case?

23 A. I think that's fair to say. That's --
24 that's not what I was retained to do and I haven't
25 attempted to affirmatively arrive at a methodology.

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1 Q. Okay. Turn to paragraph 29 of your report,
2 please. I'm looking at the next to last sentence of
3 paragraph 29, where you state (as read):

4 When respondents were asked which
5 features of their vehicle were the
6 most important, the most frequently
7 mentioned features were the
8 technology or safety features,
9 color, design, or style.

10 You were referring to Dr. Scott's survey
11 there, weren't you?

12 A. Yes.

13 Q. Okay. So according to the results of
14 Dr. Scott's survey, which you rely upon, safety
15 features is one of the most frequently mentioned
16 features mentioned in terms of purchase decisions for
17 the class vehicles?

18 A. Yes, safety features.

19 Q. Okay. That was true for Hyundai and you
20 expect that would also be true for Kia, correct?

21 A. I -- I would think it would be high on the
22 list for Kia --

23 Q. Okay.

24 A. -- consumers, based upon the Scott survey.

25 Q. Can you extrapolate from this that

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1 generally, purchasers of Hyundais and Kias, they do
2 care about safety, it is one of the primary
3 considerations in their vehicle purchase?

4 MR. LAZATIN: Objection, vague, ambiguous,
5 assumes facts, speculation.

6 THE WITNESS: Well, the question, the
7 survey -- the survey respondents responded to the
8 safety features, so there's a question about what
9 that means, is that airbags, side impact airbags,
10 there's specific features in vehicles that are
11 designed for safety.

12 So I think that's the conclusion that you
13 can draw from this -- from the survey. I wouldn't
14 extrapolate beyond that.

15 BY MR. EDWARDS:

16 Q. Oh, you don't make a connection between
17 safety features and safety?

18 A. Well, I think the survey, strictly speaking,
19 is about safety features. You know, I don't know.
20 You know, I assume safety features are the things
21 that I mentioned and that's what survey respondents
22 are -- are things like the things I mentioned and
23 those are the things the survey respondents are
24 responding to when they talk about safety features.

25 Q. Right. So you can't extrapolate that

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1 because consumers that are purchasing a Kia vehicle
2 place a high value on safety features, that they also
3 place a high value on safety?

4 MR. LAZATIN: Objection, vague, ambiguous.

5 BY MR. EDWARDS:

6 Q. You don't think the two go hand-in-hand?

7 MR. LAZATIN: Objection, vague, speculation.

8 THE WITNESS: You know, one could make that
9 jump if you wanted to, but that's not what the
10 survey, you know, specifically asked.

11 BY MR. EDWARDS:

12 Q. Okay. Can you and I agree that in general
13 safety features, the intended purpose of safety
14 features is to increase the safety of the vehicle?

15 A. I would think that's the case, yeah.

16 Q. Okay.

17 A. I don't know, but ...

18 Q. Turn to page 12 of your report, please. I'm
19 looking at paragraph -- I'm sorry, heading "B"
20 (as read):

21 Mr. Gaskin does not consider that
22 automobiles are complex goods,
23 that -- and that the panoramic
24 sunroof was bundled with other
25 features.

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1 A. Yes.

2 Q. Do you see that?

3 Okay. And then in paragraph 33, in the
4 second sentence, you state (as read) :

5 Some consumers value certain
6 attributes of a -- of a product
7 while others value different
8 attributes of that product, and
9 consumers do not necessarily value
10 the same attribute equally.

11 Do you see that?

12 A. Yes.

13 Q. Does this tie into what we -- what we talked
14 about earlier, that in your opinion, with regard to
15 complex goods, there is always going to be a certain
16 degree of heterogeneity?

17 MR. LAZATIN: Objection, form, vague.

18 THE WITNESS: Well, we did talk about this
19 topic earlier and, I think that -- I think I would
20 restate it a little differently than you did, which
21 is that in a complex good where there are many
22 attributes, different consumers are going to value
23 those different attributes differently, not all
24 consumers will value them equally.

1 BY MR. EDWARDS:

2 Q. Right. And I guess what I'm asking is: Is
3 there something unique about the Kia vehicle there or
4 does that apply to other consumer goods with multiple
5 attributes such as a washing machine, for example?

6 A. Well, it applies at two levels in the Kia
7 vehicle. It applies overall to the vehicle, but
8 there's also this -- that additional attribute that
9 in addition to buying the vehicle, the consumer is
10 making choices about option packages that themselves
11 are bundles of -- of features.

12 So it's -- it's sort of the -- it's bundling
13 times two in the case of automobiles, which I think
14 distinguishes automobiles from some other products.

15 But with respect to, in general, the
16 proposition that different consumers value different
17 attributes of complex products differently, it's --
18 it's similar to other products.

19 Q. Would you agree that there are many
20 attributes on an automobile which are not sold as
21 stand-alone features?

22 A. Yes.

23 Q. Okay. So this panoramic sunroof is not
24 unique in that it is sold as part of a bundle as
25 opposed to a stand-alone feature, when compared with

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1 other attributes on the vehicle, right?

2 A. Yes. It's not unique to this feature.

3 Q. Okay. So how would a conjoint survey be
4 appropriately used when we're talking about a defect
5 related to any individual component of a motor
6 vehicle which is not sold as a stand-alone feature?

7 MR. LAZATIN: Objection, assumes facts,
8 beyond the scope.

9 THE WITNESS: Well, again, I -- I'm not here
10 to advocate that conjoint analysis is an appropriate
11 method for calculating damages in this case. I'm
12 pointing out that the way it's been proposed is not
13 appropriate, that using the -- the average affect,
14 ignoring all the issues with whether that average
15 effect is -- is measured reliably under Gaskin's
16 approach, or Mr. Gaskin's approach, setting those
17 issues aside, even if you had an average measure that
18 made sense, it wouldn't apply to all the consumers in
19 the class.

20 And so that's ignore -- in that sense, his
21 methodology ignores the heterogeneity of consumer
22 preferences across this complex product.

23 BY MR. EDWARDS:

24 Q. Right. I -- I understand your criticism is
25 that Mr. Gaskin does not consider that automobiles

1 are complex goods and that the panoramic sunroof was
2 bundled with other features. What -- what's the
3 basis of your statement that he does not consider
4 that?

5 A. Well, I guess there's two things
6 specifically that he does. One is what I just
7 mentioned, that he uses an average that doesn't apply
8 to every, or even any class member.

9 And then secondly, the way he proposes to
10 present his choice sets to consumers, ignores the
11 fact that the sunroof is -- is often, most often,
12 purchased as part of a bundle of options, and it's
13 not purchased as a stand-alone product.

14 So his actual survey method is detached from
15 the reality of the facts in the case, and the way the
16 consumers in this class actually made their purchase
17 decision or would have made their purchase decision
18 had a disclosure been made.

19 Q. I asked you earlier, and I think your answer
20 was you had no opinion on this, but I just want to
21 lay some foundation for the question I'm about to
22 ask, so I want to make sure, okay?

23 A. Sure.

24 Q. You have no opinion sitting here today as to
25 whether these class Kia vehicles would have a reduced

1 market value as a result of the alleged defect,
2 correct?

3 A. Yeah. I have -- as I said, I haven't
4 expressed an opinion about that. But we do have the
5 Scott survey of the Hyundai vehicles which indicates
6 that there would be no reduction in value as a
7 consequence of disclosure.

8 So there's that evidence. But that's not an
9 opinion that I'm expressing here, though, there
10 certainly is evidence to that effect.

11 Q. Okay. Assume hypothetically that purchasers
12 of the class vehicles did over pay at the point of
13 sale for these vehicles because they -- they bought a
14 vehicle with a latent defect.

15 Can you give me any example of how you would
16 measure that reduction in market value, assuming,
17 again, that it exists?

18 MR. LAZATIN: Objection, vague and
19 ambiguous, assumes facts, incomplete hypothetical,
20 beyond the scope.

21 THE WITNESS: Are you assuming that all
22 class members overpaid by the same amount?

23 BY MR. EDWARDS:

24 Q. That -- that kind of wasn't part of my --
25 wasn't part of my hypothetical.

1 A. Yeah.

2 Q. I'm asking you to -- I mean, you told me
3 that you don't have an opinion really one way or the
4 other. Or you're not stating an opinion as to
5 whether there would be a reduction in the market
6 value of these class vehicles at the point of sale
7 due to the defect, correct?

8 A. Correct.

9 Q. I'm asking to you assume that there is a
10 diminished value, diminished market value at the
11 point of sale as a result of this defect.

12 Can you give me any example of how you might
13 go about measuring that diminished value?

14 MR. LAZATIN: Same objections, vague,
15 assumes facts, incomplete hypothetical, beyond the
16 scope.

17 THE WITNESS: Well, I talked about one,
18 which would be to survey all the class members to
19 perform an individualized inquiry about their --
20 about their preferences, and so I think that's
21 certainly a method that could be used to make that
22 determination.

23 It's not a class-wide method in the sense
24 that we usually use that term in class actions, it's
25 individualized inquiry.

1 BY MR. EDWARDS:

2 Q. And that's the only example that you can
3 think of?

4 A. Well, in a case like this with a complex
5 good where there's, you know, a strong presumption
6 that different consumers value it differently, I -- I
7 don't -- I'm not aware of a method other than
8 individualized inquiry.

9 And that's true in the all business, where
10 prices are negotiated, there's not a take it or leave
11 it list price, so it's an artifact of that condition,
12 too.

13 BY MR. EDWARDS:

14 Q. All right. So that -- that opinion would be
15 the same with regard to all auto defect cases?

16 A. Well, you've asked me to just, you know, on
17 the fly see if I can come up with a method so that's
18 the method that comes to mind, the individualized
19 inquiry, given the conditions in the automobile
20 industry and the fact that prices vary, combined with
21 the fact that they're in a complex good, different
22 consumers are going to place different values on
23 features and different values on an alleged defect
24 due to differences in risk tolerance and references
25 and, you know, what have you.

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1 MR. EDWARDS: All right. Okay. Let's go
2 off the record, please.

3 VIDEO OPERATOR: Okay. We're going off the
4 record. The time now is 1:28, and this ends Media
5 Number 2.

6

7 (Recess taken.)

8

9 VIDEO OPERATOR: We're back on record.
10 Time, 1:39 p.m. This begins Media Number 3.

11 Counsel, you may proceed.

12 BY MR. EDWARDS:

13 Q. All right. So, Dr. Strombom, before the
14 break we were talking about an example that you came
15 up with for measuring a reduction in market value due
16 to a latent defect.

17 Do you recall that?

18 A. Yes.

19 MR. LAZATIN: I think you may have
20 misstated.

21 Go ahead.

22 BY MR. EDWARDS:

23 Q. And -- and you talked about, you gave the
24 example of a survey which would ask each member of
25 the proposed class about his or her preferences,

1 correct?

2 A. Yes.

3 Q. And if you would, explain to me how you
4 would use the results of that kind of a survey to
5 arrive at a reduction in market value number.

6 MR. LAZATIN: Well, objection, form and
7 outside the scope.

8 THE WITNESS: I should say I haven't really
9 thought about how exactly you -- you would do that.
10 I do know that one thing you would have to consider
11 in that sort of analysis is what the supply side
12 effect would be to the extent that there is a change
13 in demand for the product as a consequence of any
14 disclosure.

15 You'd have to account for the supply side
16 effects in order to translate any change in
17 willingness to pay to a change in market price for
18 the -- the vehicle. There are ways and ways which
19 you can potentially do that, but I don't have a
20 suggestion about specifically how to do it in this
21 case, I haven't thought about it.

22 BY MR. EDWARDS:

23 Q. Okay. So sitting here today, you don't have
24 an opinion about how you would take those -- those
25 survey responses from the class members and -- and

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1 come up with a reduction in market value as a result
2 of the alleged defect?

3 A. I don't have a specific methodology that --
4 that I would propose for doing that. There are a lot
5 of things you'd have to know, things you'd have to
6 spend thinking about in order to come up with a
7 specific methodology.

8 Q. Okay. And I apologize if I asked you about
9 this earlier. Have you ever been asked to do that as
10 an expert before? Have you ever been asked to
11 calculate a reduction in market value of a vehicle as
12 a result of an alleged safety defect at the point of
13 sale?

14 MR. LAZATIN: This has been asked and
15 answered.

16 THE WITNESS: I -- I've been asked to
17 evaluate whether there's any evidence of a diminution
18 in value in class vehicles, and I've done three or
19 four of those analyses based upon used car prices.

20 So I'm using actual transaction data for the
21 proposed class vehicles and examining those price
22 data using various techniques to determine if there's
23 any evidence of a diminution in value of class
24 vehicles.

1 BY MR. EDWARDS:

2 Q. Right. And you determined in all of those
3 instances there was no diminution in value?

4 A. That's correct, in the four or five cases
5 that I've done that.

6 Q. Okay. But I think my question was: Have
7 you ever -- have you ever been asked to attempt to
8 calculate a reduction in market value of a product
9 due to an alleged defect?

10 A. No. Not if you don't count that analysis,
11 no.

12 Q. Okay. You talked about using, I think you
13 described it as real world data?

14 A. I don't recall using that expression, but
15 maybe I did.

16 Q. Okay. Well, you talked about when you've
17 looked at analyzing whether there was, in fact, a
18 diminution in value --

19 A. Yes.

20 Q. -- as a result of a -- a defect in a
21 automobile case.

22 A. Yes.

23 Q. What data did you look at?

24 A. I looked at actual transaction prices for --
25 for used cars and economists like to make the

1 distinction between revealed preferences, meaning
2 those preferences are displayed by actual market
3 participants based upon their -- what they end up
4 spending their money on in real transactions versus
5 stated preferences, which are things like responses
6 to surveys where their -- their money is actually not
7 at issue, and there's sometimes discrepancies between
8 those two approaches and that's why I think I and,
9 you know, others would tend to prefer to use actual
10 transaction data if it's available over survey or
11 hypothetical data that, you know, are constructed for
12 purposes of a particular litigation.

13 Q. Have you looked at actual transaction data
14 in this case?

15 A. No, I have not.

16 Q. Why not?

17 A. I -- it's outside the scope of what I've
18 been asked to do.

19 Q. Okay. For -- would you agree that for
20 actual transaction prices to be relevant to the
21 diminution in value analysis as data, the market
22 would have to have awareness of the alleged defect at
23 issue?

24 A. It --

25 MR. LAZATIN: Objection, vague.

1 THE WITNESS: I think in order for that
2 information to be imputed into actual market
3 transaction prices, at least some consumers would
4 need to be aware of the alleged defect, I think
5 that's true.

6 BY MR. EDWARDS:

7 Q. Okay.

8 A. Not -- not all consumers but some marginal
9 consumers would need to be aware of that.

10 Q. Where's the line in terms of how many
11 individual consumers who need to be aware of the
12 alleged defect before you would conclude that the
13 market is generally knowledgeable about the alleged
14 defect?

15 A. I don't -- I don't know that there's a
16 specific percentage or fraction of people that need
17 to be aware of it, so I don't -- I don't have a good
18 answer for that except to say, economists say the
19 marginal consumer who's on the border between
20 purchasing and not purchasing, is sort of indifferent
21 between purchasing and not purchasing, is generally
22 the consumer that's considered to set the market
23 price, but there's not a general rule about what
24 percentage of consumers that needs to be.

25 Q. Right. Well, for example, if we assume that

1 5 percent of the -- of consumers are aware of the
2 alleged defect, hypothetically, any alleged defect,
3 would that be a sufficient number in your mind to
4 yield reliable transaction price data?

5 MR. LAZATIN: Objection, incomplete
6 hypothetical, assumes facts, vague.

7 THE WITNESS: I couldn't say whether that's
8 sufficient or not. I -- I don't have an opinion
9 about that.

10 BY MR. EDWARDS:

11 Q. Okay. Turn to page 17 of your report,
12 please. Is it your opinion that conjoint surveys
13 such as the one designed by Mr. Gaskin can only be
14 appropriately used where none of the purchasers could
15 have possibly been aware of the alleged defect?

16 A. Well, I don't know about in general, but I
17 do know that with respect to Gaskin's survey the
18 assumption is that none of the consumers had
19 awareness of the defect. I don't know whether that
20 generalizes to all conjoint surveys. I wouldn't
21 speculate about that.

22 Q. And -- and why -- why do you feel that the
23 Gaskin survey assumes that consumers had no knowledge
24 of the alleged defect at the time of the initial
25 purchase?

1 A. Because that's the -- the difference in
2 price that he's setting up by the nature of the
3 questions that he's asking, is that if a consumer had
4 awareness of the alleged defect, then the actual
5 transaction price would be the but-for transaction
6 price.

7 And there would be no -- no contrast between
8 the two scenarios that he's attempting to measure the
9 difference in value between.

10 Q. So you -- you do agree that Mr. Gaskin
11 hasn't run a survey yet, correct?

12 A. That's -- that's my understanding, yes.

13 Q. And -- and do you agree that Mr. Gaskin's
14 survey forces awareness of the defect at issue in
15 this case?

16 A. Well, I guess to the extent that its
17 counterfactual is the disclosure of this alleged
18 defect to the extent that people are aware of that
19 when they take the survey I guess in that sense he
20 forces, forces it.

21 Q. Right. So if -- for those individuals that
22 take the survey that -- and I guess you and I sitting
23 here today have no idea whether -- well, strike that.

24 Sitting here today, do you have any evidence
25 that any of the survey participants in Mr. Gaskin's

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1 survey would, in fact, be aware of the alleged
2 defect?

3 A. Well, he did exploratory interviews with --
4 with ten consumers, and out of that ten, one was
5 aware, at least one was aware of the propensity of --
6 of panoramic sunroofs to shatter, specifically with
7 respect to the Kia vehicles, so yes, I think -- I
8 think there's evidence that some consumers are and
9 were aware of this condition.

10 Q. Well, that's not what I asked you, though.
11 I was asking you: Do you -- do you have any evidence
12 that an individual that will be included in
13 Mr. Gaskin's survey pool did have knowledge of the
14 defect at issue in this case at the time of purchase?

15 MR. LAZATIN: Objection -- objection,
16 argumentative, asked and answered.

17 THE WITNESS: I think my question (sic) was
18 responsive to that. I mean, this consumer who's a
19 class member presumably stated that he did a lot of
20 research before he buys a car, and he was aware of
21 sunroofs' glass breaking.

22 BY MR. EDWARDS:

23 Q. And this is an individual that will be in
24 the survey pool that Mr. Gaskin will survey?

25 A. I don't know if he's in the survey pool.

1 He's a class member.

2 Q. Okay. Yeah. And that's what I was asking
3 you, though, is specifically about the survey pool.

4 Did Mr. --

5 A. Well, the survey pool hasn't been identified
6 yet so we can't really know.

7 Q. Exactly.

8 A. But in a sample of ten, which is a small
9 sample if you uncover one of them it's -- it would be
10 very surprising if there weren't a lot more out
11 there.

12 Q. Right. But my question is, and it goes to
13 the fact that the survey pool has not been picked yet
14 because the survey hasn't been fielded, so we don't
15 know either one of us sitting here today whether a
16 individual in the survey pool would have had
17 knowledge of this defect at the time of purchase?

18 MR. LAZATIN: Objection, asked and answered,
19 speculation.

20 THE WITNESS: I think by the construction of
21 your hypothetical, we can't know that until the
22 survey pool has been identified.

23 BY MR. EDWARDS:

24 Q. Right. Okay. If we assume -- well, let me
25 back up. It sounds like you're assuming that some

1 percentage of Mr. Gaskin's survey pool would have had
2 knowledge of this defect at the time of purchase, or
3 will have had knowledge of the defect?

4 A. Well, that's not really the -- the -- well,
5 I think that's true. I think there is -- I think
6 it's likely that members of the -- people that are
7 getting surveyed by Mr. Gaskin given the numbers are
8 likely to have known about the defect, just given the
9 general broadcast of this issue and a lot of other
10 things that I talk about in the report, but that's
11 not really the problem with the survey.

12 The problem with the survey is that the
13 hypothetical that Gaskin -- Mr. Gaskin has
14 constructed is between a vehicle that as he says
15 where the sunroof will not shatter under normal
16 conditions, and then his counterfactual, which is
17 that it's -- that it will shatter in some, one to two
18 percent of cases.

19 So what he's measuring there is the
20 difference between someone who has no knowledge of
21 the defect or alternately knowledge that there is not
22 a defect versus knowledge of an alleged defect at a
23 particular rate, so what he's measuring in that
24 conjoint only applies if the person in the real world
25 actually was unaware of the defect at the time they

1 purchased the vehicle.

2 That's the problem, is that the hypothetical
3 or the assumption of his survey is not a condition
4 that's likely to be met by all consumers, since some
5 consumers at the time of purchase were likely aware
6 of the issues with panoramic sunroofs.

7 Q. So what -- what would be the result in terms
8 of how that would affect the data, assuming there is
9 some small percentage out there of individuals in the
10 survey pool that may have been aware of this alleged
11 defect at the time of purchase?

12 A. Well, again, it's -- it's not the survey
13 pool -- I mean, that's a different problem. That the
14 survey pool participants may have been aware of the
15 alleged defect. The issue is that you're
16 calculating, he's calculating a diminution in value,
17 assuming that no one knew about the defect compared
18 to then everyone knowing about the defect.

19 In the actual world, some fraction of people
20 were likely aware of the alleged defect at the time
21 they purchased the vehicle, so he's calculating his
22 diminution in value under a set of assumptions that
23 doesn't apply in the real world.

24 And the net effect is that he would be
25 overestimating the impact on the diminution of value.

1 There are other problems, too, and that's
2 just -- just to be clear, with his survey, but
3 that's -- that's the one that we're focusing on
4 talking about this.

5 Q. But do you have an opinion as to how it
6 would -- how knowledge of this defect within certain
7 members of the survey pool would affect the outcome
8 of the survey, the survey results or data?

9 A. Well, again, the issue is that people in the
10 real world who purchased the vehicle with awareness
11 of the alleged defect were not harmed because they
12 were aware of the alleged defect, so they paid the
13 same price that they would have paid with a
14 disclosure because of their awareness. That's the of
15 problem.

16 It's not per se that somebody in the survey
17 pool was aware of the defect. To the extent that
18 somebody in the survey pool was aware of the defect,
19 just with respect to the survey results, that
20 introduces other issues because it may affect the way
21 they respond or evaluate the information in the
22 survey, which is contrary to what Mr. Gaskin is
23 attempting to measure.

24 But that's -- I don't think that's my
25 primary criticism that I'm trying to point out in

1 Section 6 of my report.

2 Q. I think I understand. Your primary
3 criticism in this section of the report is that there
4 may be individuals in your mind that saw a news
5 report about these panoramic sunroof or were somehow
6 made aware of this defect at the time they purchased
7 their vehicle and therefore wouldn't have been
8 harmed?

9 A. Yes. I would say it's likely there are
10 people like that. We know of at least one. There
11 are likely to be others. We don't know how many.
12 But that's -- that's the nature of my criticism in
13 Section 6 of my report.

14 Q. So you say you know of at least one because
15 of the pretest --

16 A. That's correct.

17 Q. -- questionnaire?

18 A. That's right.

19 Q. Or because of the exploratory research --

20 A. Mr. -- calls it the exploratory interviews,
21 right.

22 Q. Right. And that's your only basis for --
23 actually your only direct basis for your assumption
24 that some members of the proposed class had knowledge
25 of this defect at the time of this purchase?

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1 MR. LAZATIN: Objection, misstates his
2 testimony.

3 THE WITNESS: Well, I think there's a lot of
4 other evidence. There's articles in the -- you know,
5 in the "New York Times," Good Morning America. If
6 you Google panoramic sunroofs on the Internet, the
7 first article that comes up is -- talks about these
8 class actions that have been filed and the alleged
9 shattering, so there's lots of other ways, a lot of
10 other evidence that leads you to conclude that it's
11 likely that some group of consumers knew about this
12 product, and I think it's born out in this sample of
13 ten of which, you know, one was aware.

14 BY MR. EDWARDS:

15 Q. In any of those news articles that -- that
16 you reviewed, or news programs that you just
17 mentioned, was there an indication that -- that Kia
18 admits this defect with the panoramic sunroofs?

19 A. I don't believe that Kia believes there is a
20 defect, and I'm not aware of any sort of admission as
21 you say in those articles with respect to Kia. Kia
22 was certainly mentioned in those, at least some of
23 those articles, along with other manufacturers, but I
24 don't think any of them stated whether or not Kia
25 believed there was actually an issue with the

1 vehicle.

2 Q. I mean, to this day, doesn't Kia still deny
3 that there is a defect in their panoramic sunroofs
4 which caused them to spontaneously shatter?

5 MR. LAZATIN: Objection, foundation.

6 THE WITNESS: It's my understanding that Kia
7 doesn't believe there's an -- there's an issue, that
8 there's a defect with these -- with these sunroofs.

9 BY MR. EDWARDS:

10 Q. Right. So are you aware of any instance
11 where a proposed class member would have been
12 informed that there is, in fact, a defect affecting
13 the safety of these vehicles due to shattering
14 panoramic sunroof which came from Kia?

15 MR. LAZATIN: Objection, foundation.

16 THE WITNESS: I have -- I don't see why it's
17 pertinent that it came from Kia, but to my knowledge,
18 there hasn't been any. The awareness came from other
19 sources to the extent there was awareness.

20 BY MR. EDWARDS:

21 Q. Well, do you agree that it's possible that
22 if a certain individual sees a news broadcast they
23 may not believe that there's an actual defect unless
24 the manufacturer admits it?

25 MR. LAZATIN: Objection, foundation,

1 speculation.

2 THE WITNESS: I couldn't say what any
3 particular viewer of Good Morning America might take
4 away from an article -- from a story, but I do know
5 that it's -- there are lots of examples of
6 information about this alleged defect in the press,
7 so a number of people could be aware of it.

8 As to specifically what that means, you'd
9 have to -- you'd have to ask them individually, I'd
10 imagine.

11 BY MR. EDWARDS:

12 Q. How many members of the class, the proposed
13 class in this case were, in fact, aware of this
14 panoramic sunroof defect when they purchased the Kia
15 vehicle at issue?

16 A. We don't know that, as we sit here.
17 Presumably would have to perform individualized
18 inquiry to -- to know the answer to that.

19 Q. Okay. Turn to paragraph 36 of your report,
20 please. And the fifth line down of paragraph 36, you
21 state (as read):

22 While Mr. Gaskin purports to
23 calculate a per vehicle damage
24 amount, neither he nor Mr. Weir
25 present any method to apportion the

1 aggregate amount between multiple
2 owners of the same vehicle.

3 Do you see that?

4 A. Yes.

5 Q. Okay. Have you read Mr. Weir's deposition?

6 A. Yes.

7 Q. Did you see in the deposition where he, when
8 asked, gives an example of how he would apportion the
9 aggregate amount between the different owners of
10 the -- of vehicles?

11 A. Yes.

12 Q. Okay. So do you -- having -- having read
13 the Weir report, do you still -- is it still your
14 opinion that Mr. Weir does not present any method to
15 apportion the aggregate amount between multiple
16 owners of the same vehicle?

17 A. Well, I think he's proposed a method. I
18 don't think it's a method that he demonstrates can
19 actually be executed in practice, and I think it's a
20 method that introduces its own set of problems in
21 terms of allocating a per vehicle amount across
22 different consumers.

23 Q. Well, that -- that's not quite what I asked
24 you, though. Is it still your opinion sitting here
25 today that Mr. Weir has not presented any method to

1 apportion the aggregate amount between multiple
2 owners of the same vehicle?

3 MR. LAZATIN: Objection, asked and answered.

4 BY MR. EDWARDS:

5 Q. Is that still your opinion?

6 A. I guess with the modifier that it's -- it's
7 not an appropriate method. He -- in one page of his
8 deposition or so, he describes a method or he
9 attempts to address that shortcoming in his analysis,
10 but it's -- it's inadequate and it's -- introduces
11 problems of its own, but he has responded to the
12 question, if that's your question.

13 Q. Yeah. I mean, you state here he hasn't --
14 Mr. Weir hasn't presented a method to apportion the
15 aggregate amount. It would -- having now read his
16 deposition, would you modify that to say he has, in
17 fact, presented a method to apportion the aggregate
18 amount between multiple owners of the same vehicle,
19 but you disagree with how he would propose to
20 apportion that amount?

21 MR. LAZATIN: Objection, misstates
22 testimony.

23 BY MR. EDWARDS:

24 Q. Is that fair?

25 MR. LAZATIN: Vague.

1 THE WITNESS: Well, my report is as of
2 September 8th, 2017, and as of that date he had not
3 described a method, so I would let me report stand.

4 As of his deposition, he's, I'd say he
5 responded to questions about that, and so I have
6 criticisms of the method that he's proposed that I
7 didn't have back when I issued my initial report
8 because he hadn't proposed a method at that time.

9 BY MR. EDWARDS:

10 Q. Okay. But now you -- you and I can agree
11 that he has proposed a method?

12 MR. LAZATIN: Objection, misstates.

13 THE WITNESS: It's vague and incomplete, but
14 he -- I think he has proposed a general -- a general
15 method.

16 BY MR. EDWARDS:

17 Q. Okay. It's just a method that you feel is
18 inappropriate?

19 A. No. I think there are problems with it,
20 yes.

21 Q. Okay.

22 A. And that it doesn't address the real issues.

23 Q. Have you ever provided any opinions to
24 assist the court with claims administration in a
25 class action case?

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1 A. I don't believe so, no.

2 Q. You -- you've just never been asked to do
3 that?

4 A. That's right.

5 Q. On page 16 at the top, you set forth your
6 criticism (as read):

7 Mr. Gaskin's method is not

8 applicable to individuals who leased
9 class vehicles.

10 Do you see that?

11 A. Yes.

12 Q. Okay. Again, assuming that there is some
13 reduction in market value of the class vehicles at
14 the point of sale as a result of the defects at issue
15 in this case, wouldn't an individual who leased a
16 class vehicle also have overpaid due to the -- due to
17 the reduced market value?

18 A. Not necessarily.

19 Q. Lease payments aren't set at least in part
20 by the purchase price of the vehicle at issue?

21 A. In part is the key. Part of your answer is
22 that there's lots of things that determine the lease
23 payments, and so you'd have to know about the context
24 of the particular lease to know whether the lease
25 payments, the present value of the lease payments was

1 affected by any disclosure.

2 Q. Lease payments, generally those payments are
3 set based on the purchase price of the vehicle on one
4 hand and the residual value of the vehicle at the end
5 of the lease term.

6 Will you agree to that?

7 A. They're set on a lot of different
8 considerations. Those are certainly two of them.
9 But they're also typically affected by maintenance
10 costs that the lessor pays for, the cost of capital
11 of the leasing company, the -- the sales, the
12 promotional incentives and other things that the
13 lessor may have either received or provided to a
14 consumer.

15 So it's not sufficient to know just those
16 two things, the residual value or the initial
17 purchase price, to determine the amount of a lease
18 payment.

19 Q. Assume hypothetically that all of the -- all
20 of the other variables that you just mentioned other
21 than the purchase price are equal, okay? On one
22 hand, someone purchases a vehicle via a lease for
23 \$30,000 over a two-year lease term, and assume a
24 second individual purchases the same vehicle for
25 \$25,000, again, all other variables being equal over

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1 the same term, wouldn't the consumer that paid \$5,000
2 more hypothetically have a higher lease payment than
3 the individual that paid 25?

4 MR. LAZATIN: Objection -- objection,
5 misleading, incomplete hypothetical, assumes facts
6 not in evidence.

7 THE WITNESS: Well, if we're assuming a
8 different initial purchase price then it would be
9 sort of logical to assume a different residual value
10 as well. If you're changing one, you're likely
11 affecting the other as well.

12 BY MR. EDWARDS:

13 Q. Well, I'm asking to you hold all those
14 things constant, though, hypothetically?

15 MR. LAZATIN: Same objections.

16 THE WITNESS: Yeah. Well, I think that's an
17 unrealistic set of assumptions, but given those
18 assumptions, I think mathematically there would be a
19 difference in the lease payments. But again, I don't
20 think that that is an appropriate set of assumptions
21 in this, in the case of leasing of automobiles.

22 BY MR. EDWARDS:

23 Q. I understand that. But -- and just to
24 clarify that the individual that paid 30,000 would
25 have a higher monthly lease payment than the

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1 individual that paid 25,000, again, assuming all the
2 other variables were the same.

3 MR. LAZATIN: Objection, vague, incomplete
4 hypothetical, misleading, assumes facts.

5 THE WITNESS: Well, I think by the
6 construction of your question, I think logically
7 that's the case, but again, I don't think that's a
8 reasonable set of assumptions in this circumstance.

9 MR. EDWARDS: Okay. I think I'm -- let's go
10 off the record.

11 VIDEO OPERATOR: Okay. We're going off
12 record. Time now is 2:14.

13 This ends Media Number 3.

14

15 (Recess taken.)

16

17 VIDEO OPERATOR: We're on record. Time is
18 2:29.

19 This begins Media Number 4.

20 Counsel, you may proceed.

21 BY MR. EDWARDS:

22 Q. Dr. Strombom, you are aware or have seen
23 those news articles or TV broadcasts that you
24 mentioned related to this panoramic sunroof defect at
25 issue, right?

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1 A. Yes.

2 Q. Okay. And yet sitting here today you don't
3 have an opinion as to whether the sunroofs are, in
4 fact, defective, do you?

5 A. No, I don't.

6 MR. EDWARDS: Okay. That's all I have.

7 MR. LAZATIN: All right. Cool. Let's go
8 off the record. Give me a couple minutes.

9 MR. EDWARDS: Okay.

10 VIDEO OPERATOR: Okay. We're going off
11 record. Time is 2:30 p.m.

12

13 (Recess taken.)

14

15 VIDEO OPERATOR: We are back on record.
16 Time, 2:48.

17 This begins Media Number 4.

18 Counsel, you may proceed.

19 MR. LAZATIN: Thank you.

20

21 EXAMINATION

22 BY MR. LAZATIN:

23 Q. Dr. Strombom, good afternoon.

24 A. Good afternoon.

25 Q. You recall that before we broke last,

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1 Mr. Edwards asked you if after having looked at some
2 news stories you had any opinion about the existence
3 of a defect as alleged in this case.

4 Do you recall that?

5 A. I do.

6 Q. And when you responded that you did not have
7 an opinion on that issue, can you explain to me what
8 you meant?

9 A. Well, what I mean is that I'm not offering
10 an expert opinion on that topic in this litigation.
11 It's not the area of my expertise.

12 Q. Okay. One other thing Mr. Edwards covered
13 in his examination was your experience with working
14 with conjoint analysis.

15 Do you recall that?

16 A. I do.

17 Q. Can you describe for me your experience
18 working with conjoint analysis as part of your work
19 or as part of your academic training?

20 A. Yes. I have taken courses as part of my
21 graduate education in conjoint analysis, as well as
22 other marketing and survey techniques, so I -- that's
23 a topic that's been covered in my graduate education.

24 In addition to the Hyundai case and the Kia
25 case, I've worked on another case involving conjoint

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1 analysis where my role was to evaluate the conjoint
2 analysis that was proposed by a plaintiff's expert.

3 And I guess I've also taught a continuing
4 legal education course on conjoint analysis and
5 contrasting conjoint analysis with hedonic
6 regressions and comparing the advantages,
7 disadvantages, pros and cons of each of those two
8 methods.

9 Q. One other thing that I think Mr. Edwards
10 touched on earlier was your experience with surveys.

11 A. Do you recall that?

12 Q. Can you tell me about any experience you've

13 had actually fielding a survey as part of your work?

14 A. Yes. I have both designed and fielded
15 surveys as part of litigation assignments, as well as
16 non-litigation assignments, in both consumer products
17 related cases and in service and recreational related
18 case.

19 So that's something that I've done as part
20 of my professional experience. And as I mentioned,
21 part of my academic training as well, courses on --
22 on marketing and survey design and execution.

23 Q. Okay. Let's talk about bayesian regression
24 for a second.

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1 Are you familiar with bayesian regression?

2 A. I am familiar with hierarchical bayesian
3 statistics. Bayesian statistics is an area of
4 statistics that I studied as part of my economics in
5 statistics training in my Ph.D. program, and I've
6 estimated many hierarchical models in the course of
7 my work and testimony as an expert.

8 Q. And can you tell me what, if any, does
9 relation bayesian regression that you just described
10 have with conjoint analysis?

11 A. Well, the method Mr. Gaskin proposed to use
12 to estimate part worth using the data that he's
13 generating through his survey is a hierarchical
14 bayesian regression method, so it's basically the
15 statistical procedure that's being applied, he
16 proposes to apply to the survey data in order to
17 extract the information that he needs to make his
18 proposed calculations.

19 And that's a procedure that I'm familiar
20 with and it's an area of statistics and economics
21 that I have experience in both from my academic
22 training and my professional experience.

23 MR. LAZATIN: Thank you, Doctor. That's all
24 I've got.

1 FURTHER EXAMINATION

2 BY MR. EDWARDS:

3 Q. Dr. Strombom, just to clarify, I asked you
4 if you'd seen the -- the news broadcasts and the
5 articles related to this panoramic sunroof defect and
6 you told me that you had, right?

7 A. Yes.

8 Q. Okay. And I understand the attorney for Kia
9 has asked you about whether you have expert opinions
10 about whether there is, in fact, a defect in these
11 panoramic sunroofs, and your answer is you don't have
12 an expert opinion, right?

13 A. Yes.

14 Q. But sitting here today, as a lay person, do
15 you know whether the class vehicles at issue have a
16 defect in the panoramic sunroof?

17 MR. LAZATIN: Objection, form, foundation,
18 vague, ambiguous.

19 THE WITNESS: What I know is what I've read
20 and -- in this case and in the various news articles
21 we've talked about that panoramic sunroofs shatter
22 from time to time. Whether that constitutes a defect
23 is not anything that I have an opinion on, either as
24 an expert or as a lay person.

25 Glass windows shatter, too, from time to

1 time. Does that mean there's a defect? I don't
2 know. That's not either my area of expertise as an
3 expert or something even as a lay person that I have
4 an opinion about with respect to the alleged defect
5 in this case.

6 BY MR. EDWARDS:

7 Q. Right. To know whether these class vehicles
8 are, in fact, sold with a defective panoramic
9 sunroof, you'd need Kia to admit that they are
10 defective and then you'd know, wouldn't you?

11 MR. LAZATIN: Objection, misstates evidence,
12 assumes facts.

13 THE WITNESS: Well, I don't -- I don't think
14 you'd need Kia to admit it to know it. I mean, there
15 are -- it would be subject to some expert
16 determination or determination by a court based upon
17 expert testimony.

18 BY MR. EDWARDS:

19 Q. Do you know, sitting here today as a lay
20 person, whether or not these panoramic sunroofs at
21 issue are defective?

22 A. No. I don't have an opinion about that, as
23 I said, either as an expert or as a lay person.

24 MR. EDWARDS: All right. No -- no more
25 questions.

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1 MR. LAZATIN: Thanks, we're done.

2 Before we go off, I want to designate the
3 transcript of this deposition as confidential under
4 the terms of the protective order governing this
5 case.

6 VIDEO OPERATOR: Okay. That concludes
7 today's testimony from Bruce Strombom. Total number
8 of media used was four, and will be retained by
9 Veritext Legal Solutions.

10 Time now is 2:55 p.m.

11

12 (TIME NOTED: 2:55 p.m.)

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1 I declare under penalty of
2 perjury under the laws of the State
3 of California that the foregoing is
4 true and correct.

5 Executed on _____, 2018, at
6 _____,' _____.
7
8
9
10 _____

11 SIGNATURE OF WITNESS
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1 STATE OF CALIFORNIA) ss.

2 COUNTY OF LOS ANGELES)

3

4 I, Lori M. Barkley, CSR No. 6426, do hereby
5 certify:

6 That the foregoing deposition testimony
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me, and
13 were thereafter transcribed under my direction and
14 supervision, and that the foregoing pages contain a
15 full, true and accurate record of all proceedings and
16 testimony to the best of my skill and ability.

17 I further certify that I am neither counsel
18 for any party to said action, nor am I related to any
19 party to said action, nor am I in any way interested
20 in the outcome thereof.

21 IN WITNESS WHEREOF, I have subscribed my
22 name this 5th day of March, 2018.

23

24



25

LORI M. BARKLEY, CSR No. 6426

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1

ERRATA SHEET

2

RE : Kondash, Tom v. Kia Motors America, Inc.

3

DEPO OF: Bruce Strombom

4

TAKEN : 2/27/2018

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State of Florida)

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23

Under penalties of perjury, I declare that I have
read my deposition transcript, and it is true and
correct subject to any changes in form or
substance entered here.

24

25

Date

WITNESS NAME

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1 VERITEXT LEGAL SOLUTIONS
2 One Biscayne Tower, Suite 2250
3 2 South Biscayne Boulevard
4 Miami, Florida 33131
5 305-376-8800

6 March 9, 2018

7 Bruce Strombom

8 c/o Adam Edwards

9 Greg Coleman Law, PC

10 800 S Gay St, Ste 1100

11 Knoxville, TN, 37929

12 adam@gregcolemanlaw.com

13 RE: Kondash, Tom -vs- Kia Motors America, Inc.

14 Dear Mr. Edwards:

15 With reference to the deposition of Bruce Strombom
16 taken on 2/27/18 in connection with the above-captioned
17 case, please be advised that the transcript of the
18 deposition has been completed and is awaiting
19 signature.

20 Please have your client read the transcript and complete
21 the errata page. Upon completion, please send the signed
22 errata to our office at Two South Biscayne Blvd., Ste. 2250,
23 Miami, FL, 33131, or email it to litsup-fla@veritext.com.

24 If this is not taken care of, however, within the
25 next 30 days, we shall conclude that the reading
 and signing of the deposition has been waived and
 the original, which has already been forwarded to
 the ordering attorney, may be filed with the Clerk
 of the Court without further notice.

26 Sincerely,

27 Production Department
28 Veritext Florida

[& - account]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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